

MEMORANDUM OF AGREEMENT

Between

CITY OF SAN JOSE

AND

**INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, LOCAL NO. 332
(IBEW)**



March 13, 2005 through March 8, 2008

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

LOCAL NO. 332

Memorandum of Agreement

March 13, 2005 --- March 8, 2008

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Exhibits

Exhibit I	Salary Schedule
Exhibit II	Subscription Agreement
Exhibit III	Substance Abuse Policy

This Memorandum of Agreement hereinafter referred to as the "Agreement" is made and entered into at San Jose, California, this 13th day of March, 2005, by and between the City of San Jose, hereinafter referred to as the "City" or "Management" and the International Brotherhood of Electrical Workers, Local No. 332, hereinafter referred to as the "Union" or "Organization."

ARTICLE 1 PERIOD OF MEMORANDUM OF AGREEMENT

This Agreement shall become effective March 13, 2005, except where otherwise provided, and shall remain in effect through March 8, 2008. No amendment or change to the provisions of this Agreement shall be valid or binding unless reduced to writing and signed by duly authorized representative(s) of the parties.

It is the mutual desire of the parties to conclude the meet and confer process as early as possible prior to the expiration of this Agreement. The parties agree to start the meet and confer process a minimum of sixty (60) days prior to the expiration of the Agreement.

ARTICLE 2 RECOGNITION

- 2.1 Pursuant to Resolution #39367 of the City Council of the City of San Jose and the provisions of applicable State law, the International Brotherhood of Electrical Workers Union, Local No. 332, hereinafter referred to as the Union is recognized as the exclusive representative for the purpose of meeting and conferring on matters within the scope of representation for employees assigned to the classifications listed in Exhibit I attached and incorporated by reference into this Agreement. The classifications listed in Exhibit I and subsequent additions thereto or deletions there from shall constitute an appropriate unit.
- 2.2 The City agrees to meet and confer with the International Brotherhood of Electrical Workers Union, Local #332, prior to contracting out work currently performed by bargaining unit members whenever such contracting out would result in material reduction of work done by bargaining unit members or would have significant adverse impact on bargaining unit work. It is agreed that position reductions, which result in lay-off of employees in the bargaining unit constitute significant impact on bargaining unit work.

ARTICLE 3 PURPOSE

The parties agree that the purpose of this Memorandum of Agreement is: to promote and provide harmonious relations, cooperation and understanding between the City and the employees covered herein; to provide an orderly and equitable means of resolving differences which may arise under this Agreement, and to set forth the full agreements of the parties reached as a result of meeting and conferring in good faith regarding matters within the scope of representation for employees represented by the International Brotherhood of Electrical Workers Union, Local No. 332.

ARTICLE 4 DEFINITIONS

For the purposes of this Memorandum of Agreement, words, phrases and terms used herein shall be deemed to have the meanings specified in Section 2 - Definitions, of Resolution #39367 of the

ARTICLE 5 WAGES AND SPECIAL PAY

5.1 Wages

- 5.1.1 Wages 2004/05. All salary ranges for employees holding positions in classifications assigned to IBEW Representation Unit 13 shall be maintained for the first year of this agreement. The 2004/05 salary ranges are listed in Exhibit I and shall remain in effect until March 11, 2006, unless otherwise changed pursuant to the provisions of this Agreement.
- 5.1.2 Wages 2006/07. Effective March 12, 2006, all salary ranges for employees holding positions in classifications assigned to IBEW Representation Unit 13 shall be increased by 1.5%. The 2006/07 salary ranges are listed in Exhibit I and shall remain in effect through March 10, 2007, unless otherwise changed pursuant to the provisions of this Agreement.
- 5.1.3 Wages 2007/08. Effective March 11, 2007, all salary ranges for employees holding positions in classifications assigned to IBEW Representation Unit 13 shall be increased by 3.75%. The 2007/08 salary ranges are listed in Exhibit I and shall remain in effect through March 8, 2008, unless otherwise changed pursuant to the provisions of this Agreement.

5.2 Shift Differential

- 5.2.1 Employees regularly assigned to work a swing shift, as defined herein, shall be paid a shift differential of one dollar and forty cents (\$1.40) an hour for each hour, to the nearest half-hour, actually worked. Employees regularly assigned to work a graveyard shift, as defined herein, shall be paid a shift differential of one dollar and sixty cents (\$1.60) an hour for each hour, to the nearest half-hour, actually worked. For purposes of this section "regularly assigned" shall be defined as any regularly scheduled shift worked in excess of one shift during a pay period.
- 5.2.2 A swing shift is any regular shift of eight (8) hours or more regularly scheduled to start between the hours of 2:00 p.m. and 11:59 p.m.
- 5.2.3 A graveyard shift is any regular shift of eight (8) hours or more regularly scheduled to start between the hours of 12 Midnight and 5:59 a.m.
- 5.2.4 Except as otherwise required by applicable State or Federal law, shift differential pay shall not be included as regular compensation in computing other benefits.
- 5.2.5 Employees shall continue to be paid such shift differential while on vacation, compensatory time and/or personal leave of forty (40) consecutive hours or longer as though such person had continued to work his/her regularly assigned swing or graveyard shift during the period of vacation. City observed holiday hours may be credited towards meeting the 40 consecutive hours requirement, however, holiday leave hours do not qualify for payment of shift differential.

5.3 Working in a Higher Classification

- 5.3.1 Upon specific assignment by the Department Director, or the designated representative, an employee may be required to perform the duties of a higher classification. Such assignments shall be made only to existing authorized positions, which are not actively occupied due to the temporary absence of the regularly appointed employee.
- 5.3.2 Employees specifically assigned to duties of a higher classification shall be compensated at the rate in the salary range of the higher class which is at least one (1) salary rate (step) higher than the rate received by the employee in the employee's present class, provided, however, that the employee shall not receive any compensation unless the assignment is for four (4) hours or longer. In such event, the employee shall be compensated as provided above for the entire shift.
- 5.3.3 As an alternative to making appointments to a vacant position, a department may, upon the approval of the Office of the City Manager, assign an employee to work in a higher classification for a period of time not to exceed six (6) months. The employee will be compensated in accordance with section 5.3.2. At the expiration of the period of assignment, the assigned employee shall return to his/her regular assignment. The department may then request authorization to fill the position on a regular basis or return it to vacant status. Department Heads are encouraged to review all situations wherein employees are working in a higher class to determine if those functions are necessary to the organization and should be continued. If the functions are no longer necessary, the position should be eliminated. This shall apply to employees who are represented by the IBEW.

5.4 Health Insurance Coverage

- 5.4.1 The City will pay ninety percent (90%) of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage, and the employee will pay ten percent (10%) of the premium for the lowest priced plan up to a maximum of twenty-five dollars (\$25) per month. If an employee selects a plan other than the lowest priced plan, any additional amount required for the premium of any other plan beyond the cost of the lowest priced plan less twenty-five dollars (\$25) per month required for the premium of any plan shall be paid by the employee.

Effective at the beginning of pay period seven (7) of payroll calendar year 2006 the City will pay ninety percent (90%) of the full premium cost of the lowest priced plan for employee or for employee and dependent coverage, and the employee will pay ten percent (10%) of the premium for the lowest priced plan up to a maximum of fifty dollars (\$50) per month. If an employee selects a plan other than the lowest priced plan, the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan.

Effective at the beginning of pay period one (1) of payroll calendar year 2007 the City will pay ninety percent (90%) of the full premium cost of the lowest priced plan for employee or for employee and dependent coverage, and the employee will pay ten percent (10%) of the premium for the lowest priced plan up to a maximum of one hundred dollars (\$100) per month. If an employee

selects a plan other than the lowest priced plan, the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan.

- 5.4.2 The indemnity health plan will be administered by a plan administrator selected by consensus of the Benefits Review Forum. Any changes to plan benefit structure will also be determined through consensus of the representatives comprising that forum.

5.4.3 Payment-in-Lieu of Health and/or Dental Insurance Program

- 5.4.3.1 The purpose of the payment-in-lieu of health and/or dental insurance program is to allow employees who have double health and/or dental insurance coverage to drop the City's insurance and receive a payment-in-lieu.

- 5.4.3.2 Employees who qualify for and participate in the payment-in-lieu of health and/or dental insurance program will receive 50% of the City's contribution toward his/her health and/or dental insurance at the lowest cost single or family plan if the employee is eligible for family coverage. The City will retain the remaining 50% of that contribution.

- 5.4.3.3 The payment-in-lieu of health and/or dental insurance program is available to full-time employees who are not on a reduced workweek or unpaid leave and have alternate group health and/or dental coverage. To qualify, an employee must provide proof of alternate group coverage to Human Resources. Alternate coverage must be acceptable by the City.

- 5.4.3.4 Enrollment in the payment-in-lieu of health and/or dental insurance program can only be done during the first thirty (30) days of employment, during the annual open enrollment period, or within thirty (30) days of a qualifying event (as defined in the Employee Services Handbook) occurring anytime during the year. Employees who miss the thirty (30) day time limit after a qualifying event will be required to wait until the next open enrollment period to enroll in the payment-in-lieu program. Enrollment in the payment-in-lieu insurance program may be canceled by the employee only during the annual open enrollment period unless the employee loses alternate group coverage. Enrollment or cancellation during the open enrollment period will become effective the first pay period of the following calendar year.

- 5.4.3.5 Payments for the in-lieu insurance program will be discontinued if an employee becomes ineligible for the program. An employee's ineligible status would include but not be limited to the following situations, employment status changes from full to part time, employee is on an unpaid leave of absence, employee is on a reduced work week, or employee loses or does not have alternate insurance coverage. An employee whose in-lieu payments are discontinued may enroll, if eligible, in a health and/or dental plan during the next annual open enrollment period.

5.4.3.6 If an employee loses alternate coverage, the employee may enroll in a City health and/or dental plan outside of the open enrollment period. To be eligible the employee must provide verification that alternate coverage has been lost.

5.4.3.6.1 **HEALTH INSURANCE:** To enroll in a City health insurance plan following loss of alternate coverage, the employee must pay all unpaid premiums (City and employee contributions) and refund any excess in-lieu-payments required to make the coverage effective on the date when alternate coverage ceased. Re-enrollment in the plan shall be in accordance with the carrier's enrollment procedures.

5.4.3.6.2 **DENTAL INSURANCE:** Enrollment in a City dental insurance plan following loss of alternate coverage will become effective the first of the month following payment of two dental premiums through the City's payroll process. Re-enrollment in the dental insurance plan shall not be retroactive.

5.5 Dental Insurance

5.5.1 The City will provide dental coverage for eligible full-time employees and their dependents. As of the date of this agreement the plans include an indemnity plan and a DHMO plan. These plans are described in the City of San Jose Employee Benefits Handbook. A copy of this document shall be available upon request in the Employee Services Department.

Effective at the beginning of pay period seven (7) of payroll calendar year 2006, the City will provide dental coverage in the lowest priced plan for eligible full-time employees and their dependents. If an employee selects a plan other than the lowest priced plan the City will pay ninety-five percent (95%) of the full premium cost for the selected dental coverage for eligible full time employees and their dependents and the employee shall pay five percent (5%) of the full premium cost for the selected plan. As of the date of this agreement the plans include an indemnity plan and a DHMO plan. These plans are described in the City of San Jose Employee Benefits Handbook. A copy of this document shall be available in the Employee Services Department.

5.5.1.1 Effective April 1, 2000, all active, eligible, full-time employees and their eligible dependents that are enrolled in the Delta Dental Plan will receive a lifetime maximum benefit of \$2,000 for orthodontic coverage.

5.5.1.2 Effective July 1, 2000, each active, eligible, full-time employee and eligible dependents that are enrolled in the Delta Dental Plan shall receive annual maximum coverage of \$1500.00.

5.6. Call Back Pay

5.6.1 Any employee who is called back to work after he/she has worked his/her scheduled shift and has left work shall be compensated for the time worked, or for three (3) hours at the appropriate rate, whichever is greater. An employee

may elect to either be paid for such call-back assignment or be credited with compensatory time off. The department will make every effort to accommodate such election, provided that:

- the election of compensatory time off does not interfere with the Department's or the City's ability to recover funds related to the call-back assignment;
- the employee makes such election during the pay period in which the call-back assignment is submitted for compensation; and
- in the event the employee requests payment for such call-back assignment, the department's budget can accommodate such payment.

Except in extenuating circumstances, once the employee has received approval from the appropriate authority to take compensatory time off, payment for such approved time off shall not be authorized.

5.6.2 An employee who is called back shall be entitled to earn the three (3) hour minimum call back compensation only once during an eight (8) hour shift; for subsequent call backs during the same shift, the employee shall be credited with the time actually worked or for one-half (0.5) hour at the appropriate rate, whichever is greater.

5.7 Jury Duty Each full time employee who is required to take time off from duty to serve as a juror in any Court of this State, or of the United States of America, shall receive their regular base compensation less all jury fees received excluding mileage. Each employee receiving a notice to report for jury service shall immediately notify their immediate supervisor.

Employees assigned to regular shifts:

5.7.1 Jury Selection Process and Jury Impanelment. Employees assigned to a Monday through Friday day shift which includes all employees regularly assigned to work any shift scheduled to begin between 6:00 a.m. and 1:59 p.m. shall be subject to the following for both the jury selection process and jury impanelment:

1. If the employee spends five or more hours in either the selection process or jury impanelment, the employee need not return to work. For this, the employee receives the regular base pay for that shift and shall pay to the City the amount received from the court, excluding mileage.
2. If the employee spends less than five hours in either the selection or jury impanelment processes, they must report to work and complete their shift, minus the time spent in the selection process. For this, the employee will receive their regular base pay rate for that shift and shall pay to the City the amount received from the court, excluding mileage.
3. If the employee spends less than five hours in either the selection or jury impanelment processes and does not return to work, the employee will receive no pay from the City for that day, but will be entitled to keep the jury fee. With prior approval from the employee's supervisor, the employee shall be paid for the employee's entire shift provided that the employee shall be permitted to take accrued compensatory time or available vacation time in an amount equal to the number of hours remaining on the employee's shift after the employee's release by the court.

4. Employees are not eligible for overtime due to time spent in the jury selection process or jury impanelment.

Employees assigned to shifts other than regular shifts (as defined above):

5.7.2 Jury Selection Process. Employees assigned to a shift regularly scheduled to start between the hours of 2:00p.m. and 5:59 a.m., or to other alternative shifts (a shift other than Monday through Friday), who are required to appear for jury selection process shall be subject to the following:

1. For purposes of providing employees adequate rest before appearing for jury selection, employees shall be allowed to adjust their shift to an end time no later than 1:00 a.m. on the morning they are required to appear for jury selection.
2. If the employee spends five or more hours in the selection process, the employee need not report to work for the following shift if it is the next calendar day. For this, the employee receives the full day's pay for that shift and shall pay to the City the amount received from the court, excluding mileage.
3. If the employee spends less than five hours in the selection process, the employee shall report to work for their next scheduled shift. Hours spent in the selection process will be deducted from either the beginning or end of the next shift, pending supervisor's approval. For this, the employee will receive a full day's pay and shall pay to the City the amount received from the court, excluding mileage.
4. Employees are not eligible for overtime due to time spent in the jury selection process.

5.7.3 Jury Impanelment for Employees Assigned to a Swing or Night Shift. Employees assigned to a shift regularly scheduled to start between the hours of 2:00 p.m. and 5:59 a.m., or to other alternative shifts (a shift other than Monday through Friday), who are selected to serve on a jury shall be subject to the following:

1. Employees shall be temporarily assigned to a day shift of 8:00 a.m. - 5:00 p.m., Monday through Friday. This temporary schedule change shall only apply to employees who are selected to serve on a jury, not those who are called to jury selection.
2. The temporary schedule change shall begin on the first day of the work week following jury impanelment. Until the temporary shift change takes effect, the provisions applicable to jury selection for employees on alternate shifts shall apply.
3. Once an employee is temporarily assigned to a day shift of 8:00 a.m. - 5:00 p.m. Monday through Friday, the provisions applicable to jury duty for employees on regular Monday through Friday day shifts shall apply.
4. Upon completion of jury duty, the employee will resume their normal work schedule on the first day of the work week following release from jury duty.

5.8 Stand-by Pay

Employees specifically assigned to stand-by duty shall be compensated for such assignment with one (1) hour at the appropriate rate for each eight (8) hours or portion thereof greater than or equal to four (4) hours of such stand-by duty performed on a regularly assigned work day or on a regularly scheduled day off. An employee may elect to either be paid for such stand-by assignment or be credited with compensatory time off. The department will make every effort to accommodate such election, provided that:

- the election of compensatory time off does not interfere with the Department's or the City's ability to recover funds related to the stand-by assignment;
- the employee makes such election during the pay period in which the stand-by assignment is submitted for compensation; and
- in the event the employee requests payment for such stand-by assignment, the department's budget can accommodate such payment.

Except in extenuating circumstances, once the employee has received approval from the appropriate authority to take compensatory time off, payment for such approved time off shall not be authorized.

5.9 Witness Leave

- 5.9.1 Each employee of the City who is required, under subpoena, to take time off duty with the City, to appear as a witness, by reason of his/her employment with the City, in any case or proceeding in any Court of this State or of the United States of America, shall receive his/her regular salary during the time of his/her service as a witness under subpoena, less any and all witness fees which he/she may receive therefore. Compensation will not be paid if the employee is a party to the action and is in a position adverse to the City.
- 5.9.2 Each employee of the City who is called from off-duty status to testify in any court, under subpoena, on any subject connected with his/her employment, shall be credited with overtime for the time spent by him/her in court, or for two (2) hours, whichever is greater, less any and all witness fees which he/she may receive therefore. Compensation will not be paid if the employee is a party to the action and is in a position adverse to the City.
- 5.9.3 Upon service of a subpoena, an employee shall immediately advise his/her Department Head or supervisor thereof, and of the time when he/she is required to appear in Court in response thereto.

5.10 Educational and Professional Incentives

- 5.10.1 The City will reimburse each employee 100% of expenses incurred, up to \$1000 per fiscal year, for registration, tuition, fees, and textbooks for college accredited courses which are either related to or beneficial for the employee's current position or related to or beneficial for a lateral transfer, promotion or other career opportunity within the City service as approved by the Department Director or designee. Of the \$1000.00 amount, up to \$600.00 may be used for non-college accredited courses, Continuing Education Units, Adult Education Classes, workshops, membership dues in professional associations, professional licenses, and professional certificates which are either related to or beneficial for

the employee's current position or related to or beneficial for a lateral transfer, promotion, or other career opportunity within the City service, as approved by the Department Director or designee. In no event shall tuition reimbursement received from this program plus reimbursement from other educational incentive programs exceed the total cost of registration, tuition, fees, and textbooks. Section 8.02 of the City's Human Resources Administrative Manual outlines additional details of the program.

5.10.2 If an employee is denied educational and professional incentives under the requirements set forth in Section 5.10.1 above, the employee may appeal in writing to the Department Director, or designee, for reconsideration. If the employee is dissatisfied with the decision of the Department Director, or designee, the employee may apply in writing for reconsideration with the Director of Human Resources, or designee. The written decision of the Director of Human Resources, or designee shall be final, with no process for further appeal.

5.11 Use of Private Automobile--Mileage Reimbursement

Each employee of the City authorized by the City Manager or his/her designee to use his/her private automobile in the performance of the duties of his/her position, shall be entitled to receive and shall be paid as a travel allowance for such use of his/her private automobile a "mileage reimbursement rate" consistent with the City's rate.

5.12 Life Insurance

The City shall continue to pay premiums on existing life insurance for full-time employees during the term of this Agreement and the face value of such insurance shall be \$20,000 per employee.

5.13 Meal Allowance

In the event an employee is assigned to work two consecutive shifts, the City shall provide the employee with \$10.00 as a meal allowance.

ARTICLE 6 HOURS OF WORK AND OVERTIME

6.1 The workweek shall be seven (7) days commencing at 12:01 a.m. Sunday and ending at 12:00 Midnight the following Saturday.

6.2 The workday, for pay purposes, shall be a 24-hour period commencing with the beginning of the employee's regularly scheduled shift.

6.3 The normal work schedule for full-time employees shall be forty (40) hours consisting of five (5) consecutive days of eight (8) hours each, exclusive of a lunch period, Monday through Friday.

6.4 The City may establish a work schedule other than Monday through Friday where the interests of, or service to, the public requires. Employees assigned to such a schedule shall be given two (2) consecutive days off, even though the days off are in different work weeks except where due to a change in the employee's work schedule, it is impossible to provide two (2) consecutive days off.

- 6.5 The Department Head, subject to regulation and control by the City Manager, shall determine the number of hours of work per workday and workweek for part-time employees. Such employees, however, shall not be required to work a normal work schedule except on an intermittent basis.
- 6.6 An employee authorized or required to work overtime who works in excess of his/her scheduled shift on a regular workday, or in excess of forty (40) hours per week, shall be compensated at the rate of time and one-half (1-1/2) the employee's hourly rate, except when such excess hours result from a change in such employee's work week or shift or from the requirement that such employee fulfill his/her work week requirement.
- 6.6.1 Double-backs Employees at the Water Pollution Control Plant who work and complete two (2) non-consecutive eight (8) hours shifts or longer within a twenty-four (24) hour period shall be compensated with a four (4) hour premium at the 1.0 rate.
- 6.7 Notwithstanding 6.6 above, any employee who works in excess of twelve (12) continuous hours shall receive two times the base hourly rate for all hours worked in excess of twelve (12) continuous hours.
- 6.8 Except as provided in 6.7 above, overtime worked shall be compensated, at the time and one-half (1-1/2) rate, by compensatory time. However, the Department Head or designee may authorize payment in lieu of compensatory time where providing such compensatory time would impair departmental operations or efficiency. Except in extenuating circumstances, once the employee has received approval from the appropriate authority to take compensatory time off, payment for such approved time off shall not be authorized.
- 6.8.1 The Department Director may announce the intent of the Department to pay employees the appropriate rate for accrued compensatory time that is not used as of a date specified by the department. This announced intent may apply to an entire Department or to a specified section(s) of a department. The announcement will also specify a date by which time each affected employee must elect to either:
- a) be paid for all accrued, unused compensatory time, or
 - b) be paid for all but 40-hours of such accrued, unused compensatory time, or
 - c) retain all accrued, unused compensatory time, subject to other applicable provisions of this Article 6.
- 6.9 Compensatory time credited to an employee, and which is not taken within twenty-six (26) pay periods following the pay period in which the overtime is worked, shall be paid to the employee at the appropriate rate.
- 6.10 Time spent on paid sick leave, disability leave, holiday leave, vacation leave, personal leave, military leave, compensatory time off duty, or other authorized paid leave shall be deemed time worked for purposes of this Article.
- 6.11 An employee who is terminated by reason of resignation, discharge or retirement and who upon the effective date of such termination has accrued unused compensatory time shall be paid for such hours of unused compensatory time at the employee's straight time hourly rate. In the event the termination results from the death of the employee, the payment, if any, shall be made to the executor of the will or the administrator of the estate.

- 6.12 A fifteen (15) minute rest period will be provided in each half of the regularly scheduled work shift. Insofar as is possible, rest periods shall be scheduled in the middle of each half of the shift. It is understood and agreed that the inability to permit an employee to take a rest period shall not be a basis for any claim for overtime compensation.

ARTICLE 7 DUES AND AGENCY FEE DEDUCTION

- 7.1 The City will deduct from the pay of each employee covered by this Memorandum of Agreement, while such employee is assigned to a classification included in a Representation Unit represented by the Union, dues uniformly required as a condition of membership, pursuant to the Union's constitution and bylaws provided that the employee has signed an appropriate Authorized Dues Deduction card. Such authorization shall be on a form approved by the Municipal Employee Relations Officer.
- 7.2 Payroll dues deductions shall be in the amount certified to the Municipal Employee Relations Officer from time to time by the designated officer of the Union as regular monthly dues.
- 7.3 Deductions shall be made from wages earned by the employee for the first two pay periods in each month for dues for the preceding month. The City will remit to the designated officer of the employee organization the amounts so deducted accompanied by a list of the employees for whom the deduction was made. The deductions and the list will be remitted to the Union not later than fourteen (14) days following the pay period in which the deductions were made.
- 7.4 Properly executed dues deduction cards and an alphabetical list of the additional employees authorizing the deduction shall be submitted to the Municipal Employee Relations Officer on or before the Monday of the week preceding the beginning of the pay period in which deductions are to be made.
- 7.5 If, through inadvertence or error, the City fails to make the authorized deduction, or any part thereof, the City shall assume no responsibility to correct such omission or error retroactively.
- 7.6 It is expressly understood and agreed that the Union will refund to the employee any union dues erroneously withheld from an employee's wages by the City and paid to the Union. In the event the Union fails to refund the dues erroneously withheld within a reasonable period of time following notification, the City will make such refund and deduct the amount from the amount due to the Union.
- 7.7 The Union shall indemnify the City and hold it harmless against any and all suits, claims, demands and liabilities that may arise out of or by reason of any action that shall be taken by the City for the purpose of complying with the foregoing provisions of this Article, or in reliance on any list or certification which shall have been furnished to the City under the above provisions.
- 7.8 Agency Fee
- 7.8.1 Employee Rights
- 7.8.1.1 The City and the Union recognize the right of employees to form, join and participate in lawful activities of employee organizations and the equal, alternative right of employees to refuse to form, join

and participate in employee organizations. Neither party shall discriminate against an employee in the exercise of these alternative rights.

7.8.1.2 Accordingly, membership in the Union shall not be compulsory. An employee has the right to choose, either; to become a member of the Union; or, to pay to the Union a fee for representation services; or, to refrain from either of the above courses of action upon the grounds set forth in Section **7.8.5** below.

7.8.2 Employee's Obligation to Exclusive Representation. An employee who is a member of the Union on **March 13, 2005**, and any employee who becomes a member after March 13, 2005, shall maintain such membership, except as provided during the change of status period set forth in Section 7.8.3.2 below.

7.8.3 Any person in a classification represented by the Union must, within thirty (30) days after their employment, submit to the City either:

1. A signed authorization to deduct dues as a member of the Union; or
2. A signed affidavit that the employee qualifies for an exemption as set forth in Section 7.8.5 below. In this case the employee must designate a charity from Section 7.8.5.1 to which the appropriate amount will be paid through payroll deduction.

7.8.3.1 If a person fails to make any of the designations set forth above within the thirty (30) day period, they will be given notice by the City that the Agency Fee deduction will be made beginning with the first full pay period following the expiration of the thirty (30) day period. The City and the Union agree that the Agency shop fee shall be paid in exchange for representation services necessarily performed by the Union in its capacity as exclusive bargaining agent and in conformance with its duty of fair representation of said employee who is not a member of the Union.

7.8.3.2 During the period February 8, 2008 through and including March 8, 2008, any employee who is a member of the Union may, by written notice to the Municipal Employee Relations Officer, or designee, resign such membership and change their status to the Agency Fee or exempt category in accordance with the provisions of this Article.

7.8.3.3 The parties agree that under the Full Faith and Credit Article of this contract, the Municipal Employee Relations Officer, or designee, is granted the authority to cancel payroll deductions, including Agency Fee and dues deductions, in the event of a concerted activity, as described in Section 10.1.1.

7.8.3.4 The Union specifically agrees that the provisions of Section **7.8.6** of this Article apply to any claims against the City or any of its agents or employees regarding the payroll deduction of an Agency Fee.

7.8.4 Definition of Agency Fee. The Agency Fee collected from non-member bargaining unit employees pursuant to Section **7.8.2** of this Agreement shall be

limited to the Union (local, state, and national) annual costs for representing such employees. Such amount shall be those amounts for full-time and part-time employees as are certified to the Municipal Employee Relations Officer, or designee, from time-to-time by the designated officer of the Union as the Agency Fee.

7.8.4.1 The Union certifies that this “representation fee” includes only those costs actually incurred by the Union in representing employees, who are not also members of the Union, in matters specifically and directly connected with the enforcement and administration of this Agreement, the adjustment of grievances, and litigation pertaining thereto. The Union further certifies that this “representation fee” excludes all other costs, fees, and adjustments including, but not limited to: Union fines, back dues, initiation fees, or any other charge required as a condition of Union membership; any and all amounts which may be used, directly or indirectly, for political or ideological activities, any and all amounts which do not constitute costs actually incurred by the Union in representation matters specifically and directly connected with the bargaining of, enforcement and administration of this Agreement, the adjustment of grievances, and litigation pertaining thereto. The Union specifically agrees that the provisions of Section 7.8.6 of this Article apply to any claims against the City or any of its agents or employees regarding the appropriateness of the amount of any “representation fee” set forth in this Section.

7.8.5 Employees Exempted From Obligation to Pay Union. Any employee shall be exempted from the requirements of Section 7.8.2 above if such employee is a member of a bona fide religion, body or sect, which has historically held conscientious objections to joining or financially supporting public employee organizations.

7.8.5.1 Such exempt employee shall, as an alternative to payment of an Agency Fee to the Union, pay an amount equivalent to such Agency Fee to either:

- a. The United Way; or
- b. Combined Health Appeal (C.H.A.); or
- c. Any charity jointly agreed upon by the City and the Union. Such charities cannot be affiliated in any manner with the Union, nor can such charity be related to an established religious organization.

7.8.6 Hold Harmless. The Union shall hold the City harmless and shall fully and promptly reimburse the City for any reasonable legal fees, court costs, or other litigation expenses incurred in responding to or defending against any claims against the City or any of its agents, or employees, in connection with the interpretation, application, administration or enforcement of any section in this Memorandum pertaining to Agency Fees. The existence of or extent of any indemnification obligation under this provision shall be subject to the grievance procedure spelled out in this Agreement.

Expiration Date of Agency Fee Provisions. It is agreed and understood by the parties to this Agreement that the provisions, rights and obligations herein

pertaining to payment of any Agency Fee and dues deduction shall not survive beyond the term of this Agreement, and shall accordingly expire on **March 8, 2008**. As such, the City will no longer collect or transmit dues to the International Brotherhood of Electrical Workers, Local #332, beyond the date of expiration of this agreement. However, pursuant to Government Code Section 3502.5, this Article may be rescinded in its entirety by a majority vote of all the employees in the unit covered by this Agreement. It is understood and agreed that: (1) a request for such a vote must be supported by a petition containing the signatures of at least 30% of the employees covered by this Article; (2) such vote shall be by secret ballot; and (3) such vote may be taken at any time during the term of this Agreement; but, in no event shall there be more than one vote taken during such term.

ARTICLE 8 MANAGEMENT RIGHTS

- 8.1 Except to the extent that the rights are specifically limited by the provisions of the Agreement, the City retains all rights, powers and authority granted to it or which it has pursuant to law or the City Charter including, but not limited to: the right to direct the work force; increase, decrease or reassign the work force; hire, promote, demote; discharge or discipline for cause; transfer or reclassify employees; provide merit increases; assign employees days of work, shifts, overtime and special work requirements, and to determine the necessity, merits, mission and organization of any service or activity of the City or of any City Department, Agency or Unit.
- 8.2 The City has the sole and absolute right to determine the nature and type of, assign, reassign, revoke assignments of or withdraw assignments of, City equipment, including motor vehicles, to or from employees during, after or before hours of duty, without consultation or meeting and conferring with the employee affected or the International Brotherhood of Electrical Workers, Local No. 332 representing such employees.

ARTICLE 9 FULL UNDERSTANDING, MODIFICATION AND WAIVER

- 9.1 This Agreement sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any and all prior or existing Memoranda of Understanding, understandings and agreements, whether formal or informal, are hereby superseded and terminated in their entirety.
- 9.2 Existing benefits provided by ordinance or resolution of the City Council or as provided in the San Jose Municipal Code and which are referenced in the Agreement shall be provided in accordance with the terms of the Agreement.
- 9.3 It is the intent of the parties that ordinances, resolutions, rules and regulations enacted pursuant to this Memorandum of Agreement be administered and observed in good faith.
- 9.4 Although nothing in this Agreement shall preclude the parties from mutually agreeing to meet and confer on any subject within the scope of representation during the term of this Agreement, it is understood and agreed that neither party may require the other party to meet and confer on any subject matter covered herein or with respect to any other matter within the scope of representation during the term of this Agreement.

ARTICLE 10 FULL FAITH AND CREDIT

10.1 It is understood and agreed that:

- 10.1.1 Participation by any employee in a unit represented by the organization in picketing with respect to any issue concerning matters within the scope of representation provided or proposed to be provided by the City of San Jose for any person, or participation in a strike, work stoppage or slowdown, or the failure to perform lawfully required work shall subject the employee to a disciplinary action up to and including discharge.
- 10.1.2 If the Employee Organization, its officers or its authorized representatives violate provision 10.1.1 above or tolerate the violation of provision 10.1.1 above and after notice to responsible officers or business representatives of the Employee Organization such officers or business representatives fail to take such prompt affirmative action as is within their power to correct and terminate the conduct described in provision 10.1.1 above, in addition to any other law, remedy or disciplinary action to which it or its officers or representatives may be subject, said organization shall, by action of the Municipal Employee Relations Officer, also be subject to suspension or revocation of the recognition granted to such Employee Organization and the Municipal Employee Relations Officer may suspend or cancel any or all payroll deductions payable to or in behalf of members of such Organization, and prohibit or restrict the use of any City facility of any nature whatsoever and prohibit or restrict access by said officers or representatives to work or duty stations of employees in the Representation Unit. Such action on the part of the Municipal Employee Relations Officer shall not be subject to review under the provisions of Article 12, entitled Grievance Procedure.

ARTICLE 11 SAFETY

- 11.1 The City shall provide a reasonably safe and healthy working environment in accordance with applicable State and Federal laws and regulations. The employee organization/union agrees that where safety devices or protective equipment is required or furnished, its use shall be mandatory.
- 11.2 An employee who believes his/her work assignment is unsafe and for that reason refuses to perform such assignment shall be assigned other duties, if other duties are available, and no other employee shall be assigned the work assignment in dispute until after a determination has been made by the City's Safety Officer. If no other duties are available, the employee shall be placed on a leave of absence without pay, pending the above determination.
- 11.3 Prior to being placed on such leave, however, the employee may request the presence of the appropriate employee organization/union representative.
- 11.4 The employee's immediate supervisor shall immediately request the City's Safety Officer to make a determination as to the safeness of the work assignment in question. If the assignment is determined to be unsafe, the employee shall be reimbursed for any time lost due to the refusal to perform. If the employee disagrees with the determination of the City's Safety Officer and continues to refuse to perform the assignment, he/she shall be assigned other duties, if such other duties are available, and a prompt request for a determination by the Department of Industrial Safety of the State of California shall be

made. Pending such determination, the assignment shall not be given to another employee. If no other duties are available, the employee shall be placed on a leave of absence without pay, pending the determination of the Department of Industrial Safety. If the assignment is determined to be unsafe, the employee shall be reimbursed for any time lost due to refusal to perform. The determination by the Department of Industrial Safety of the safeness or unsafeness of the work assignment shall not be subject to the grievance procedure.

- 11.5 Upon request of either the employee or the representative of the Department of Industrial Safety, the appropriate employee organization/union representative shall be permitted to accompany the City Safety Officer, or the representative of the Department of Industrial Safety, or both, during the inspections of the questioned work assignment. Neither the employee nor the appropriate employee organization/union representative shall suffer any loss of compensation for time involved in the inspections of the questioned work assignment during their respective regularly scheduled working hours. In no event shall overtime or premium pay be paid for any time spent in such inspections.
- 11.6 As used herein, the term "City Safety Officer" shall include any person designated to act as such.

ARTICLE 12 GRIEVANCE PROCEDURE

- 12.1 Any dispute between the City and an employee, or, where provided, the appropriate representative of the Union, regarding the interpretation or application of the written Memorandum of Agreement, or the interpretation or application of the Employer-Employee Resolution #39367, as amended, shall be considered a grievance. A grievance may be initiated only by the employee directly affected except as otherwise provided herein. Where the dispute directly affects a significantly large group of employees in the Representation Unit, the appropriate Union representative may file a grievance on behalf of such employees.
- 12.2 Procedures
- 12.2.1 Grievances involving the interpretation or application of this Memorandum of Agreement shall be processed in accordance with the procedures set forth in this Article 12.
- 12.2.2 Grievances involving Resolution #39367, as amended, including any grievance pursuant to Section 22 of that Resolution, shall be filed in writing with the Municipal Employee Relations Officer and shall be processed in accordance with applicable provisions of the Resolution.
- 12.3 STEP I
- 12.3.1 An employee may present the grievance orally either directly or through his/her Union representative to the immediate supervisor. The grievance must be presented within ten (10) working days following the event or events on which the grievance is based. The immediate supervisor shall make whatever investigation necessary to obtain the facts pertaining to the grievance. Within five (5) working days after receiving the oral grievance, the immediate supervisor shall give the employee an oral reply.

- 12.3.2 If the employee is not satisfied with the reply of his/her immediate supervisor, he/she may appeal the grievance to Step II.

12.4 STEP II

- 12.4.1 If the employee desires to appeal the grievance to Step II, the grievance shall be reduced to writing, on forms provided, and presented to the Department Head, or his/her designated representative, within five (5) working days following the receipt of the immediate supervisor's oral reply.
- 12.4.2 The written grievance shall contain a complete statement of the grievance, the alleged facts upon which the grievance is based, the reasons for the appeal, the section or sections of the Memorandum of Agreement relied upon or claimed to have been violated, and the remedy requested. The grievance shall be signed and dated by the employee.
- 12.4.3 The Department Head, or his/her designated representative, may arrange a meeting between himself/herself, the employee, the appropriate Union representative, and the immediate supervisor to attempt to resolve the grievance. In any event, the Department Head, or his/her designated representative, shall give a written decision to the employee within ten (10) working days following receipt of the written appeal to Step II.
- 12.4.4 If the employee is not satisfied with the decision, he/she may appeal the grievance to Step III.

12.5 STEP III

- 12.5.1 If the employee desires to appeal the grievance to Step III, the employee shall complete the appropriate appeal section of the grievance form, sign the appeal, and present the grievance to the Municipal Employee Relations Officer or designee within five (5) working days following receipt of the written decision at Step II.
- 12.5.2 Within fifteen (15) working days after receipt of the appeal to Step III, the Municipal Employee Relations Officer or designee shall hold a meeting with the employee, the appropriate Union representative, the Department Head or designee to discuss the matter. A written decision shall be given the employee or the appropriate Union representative within five (5) working days following the meeting.
- 12.5.3 If the decision of the Municipal Employee Relations Officer or designee is unsatisfactory, the appropriate employee organization representative may appeal the grievance to Step IV - Arbitration.

12.6 STEP IV - ARBITRATION

- 12.6.1 If the grievance has been properly processed through the previous steps of the procedure and not resolved, the appropriate employee organization representative may appeal the grievance to Arbitration. The appropriate employee organization representative shall notify the Municipal Employee Relations Officer in writing, within fourteen (14) calendar days following receipt by the employee of the written answer at Step III.

- 12.6.2 Within fourteen (14) calendar days following the receipt of the notice of appeal to Step IV, a meeting may be arranged by the Municipal Employee Relations Officer with the appropriate employee organization representative to prepare a joint statement of the issue, or issues, to be presented to the arbitrator. The employee may also be permitted to attend. If the parties are unable to agree upon the issue, or issues, each party will prepare its statement of the issue, or issues, and jointly submit the separate statement of issue, or issues to the arbitrator. At the beginning of the hearing referred to herein, the arbitrator shall determine what the issue, or issues, are.
- 12.6.3 The parties may mutually agree upon the selection of the arbitrator or shall jointly request the State of California Conciliation Service to provide a list of seven (7) persons qualified to act as arbitrators.
- 12.6.4 Within ten (10) working days following receipt of the above referenced list, the parties shall meet to select the arbitrator. The right to strike the first name shall be determined by lot and the parties shall alternately strike one name from the list until only one (1) name remains, and that person shall be the arbitrator.
- 12.6.5 The arbitrator shall hold a hearing on the issue, or issues, submitted, or as determined by the arbitrator if the parties have not mutually agreed upon the issue, or issues, and render a written decision and reasons for the decision as soon after the hearing as possible. The decision shall be binding on both parties, and shall be limited to the issue, or issues involved.
- 12.6.6 The decision shall be sent to the Municipal Employee Relations Officer and to the employee or appropriate representative of the Union.
- 12.6.7 Each of the parties shall pay for the time and expenses of its representatives and witnesses through all stages of the arbitration procedure and shall contribute equally to the fee and expenses of the arbitrator and the court reporter. The arbitrator's fee shall be determined in advance of the hearing.
- 12.6.8 The parties agree that the arbitrator shall not add to, subtract from, change or modify any provisions of this Agreement and shall be authorized only to apply existing provisions of this Agreement to the specific facts involved and to interpret only applicable provisions of this Agreement.
- 12.6.9 The parties agree that the time limits set forth herein are of the essence of this procedure and are to be strictly complied with. Time limits may be extended only by written mutual agreement of the parties.

12.7 General Provisions

- 12.7.1 Although grievances may be investigated and/or processed during normally scheduled working hours, the Union agrees the time spent by its designated representatives shall be kept to a minimum and no Union representative shall be entitled to any additional compensation or premium pay for time spent in processing grievances outside the representative's regularly scheduled hours. The Union also agrees that it will not process grievances on periods of overtime.
- 12.7.2 Any grievance not filed or appealed within the time limits specified shall be considered settled on the basis of the last disposition given. In the event the

grievance is not answered within the time limits set forth herein, either the employee or the appropriate Union representative may appeal the grievance to the next higher step within the time limits provided.

- 12.7.3 The Union agrees that it will not initiate or pursue any other avenue of redress on any matter properly within the scope of representation until the provisions of this Article, including arbitration, have been utilized.
- 12.7.4 Working days as used in this Article shall be defined as the regularly scheduled working days of the employee or appropriate Union representative filing or appealing the grievance and the regularly scheduled working days of the appropriate representative of the City responsible for replying to the grievance.
- 12.7.5 If an employee desires to file a grievance involving separation from City employment pursuant to the application of Article 13, entitled Leaves of Absence, the employee shall file the grievance in writing at Step II within ten (10) calendar days following the date of separation.
- 12.7.6 Any of the time limits specified in Steps I through III may be extended by written mutual agreement of the parties.

12.8 Stewards

- 12.8.1 A designated Steward shall be authorized release time to appear at Civil Service Commission or City Council meetings when such bodies are considering matters affecting the Union, to attend Federated Retirement Board meetings, and to attend meetings to which he/she is called by the City Administration regarding matters affecting the Union. The City and the Union acknowledge that Stewards are often in a position to facilitate settling grievances before they advance into a formal stage. Release time is not authorized for lobbying or political purposes.
- 12.8.2 The union may designate a total of four (4) departmental Stewards. Stewards shall be selected from the following departments and shall not exceed one designation per department: Airport, Environmental Services (ESD), Information Technology (Communications), General Services, and Transportation.
 - 12.8.2.1 The union may also designate one (1) at large Chief Steward. In addition to those duties required of a Steward, the Chief Steward has special responsibilities. The Chief Steward may serve as the communication link between the Union and the City and be authorized reasonable release time in an attempt to resolve conflicts.

Paid release time will not be provided to both the Chief Steward and a departmental Steward to address the same grievance or discipline unless Employee Relations receive prior approval.
- 12.8.3 The Union agrees that it shall certify as Stewards only full-time employees who have satisfactorily completed an initial probationary period during the employee's current term of employment.

- 12.8.4 A Steward shall function under the terms of the grievance procedure in the department(s) or sections of a department(s) for which he/she has been certified. Exceptions to this paragraph may be made by mutual agreement of the parties.
- 12.8.5 Should a Steward be required to leave his/her assigned duties to investigate and/or process a grievance, he/she shall secure the permission of his/her immediate supervisor and inform the supervisor of the general nature of the grievance, and report back to the supervisor upon returning to his/her assigned duties. Permission for a Steward to leave his/her assigned duties shall not be unreasonably withheld.
- If it is necessary for a Steward to handle a grievance in a department other than the department to which he/she is regularly assigned, the Steward shall report to the immediate supervisor of the aggrieved employee, the employee involved in the grievance, or the function being investigated.
- 12.8.6 In the event the parties agree that a Steward or other representative of the Union is permitted to investigate and/or process a grievance other than as provided in 12.8.4 above, such representative shall continue to investigate and/or process the grievance, even if the department or section of a department in which the grievance arose is subsequently assigned to another representative.
- 12.8.7 The Union agrees to properly notify the Municipal Employee Relations Officer of any changes of Stewards.
- 12.8.8 The parties agree that they have a mutual interest in well-trained Stewards. Toward this end, certified Stewards shall be granted a maximum of eight (8) hours paid release time during each year of this agreement to participate in training sessions related to the provisions of this agreement, jointly conducted by Union and City representatives according to an outline of such training activities to be submitted by the Union and approved by the City prior to the conduct of any such training sessions.
- 12.8.9 The City agrees to provide up to three (3) hours of paid release time every other month (six times per year) for up to four (4) Stewards and one (1) Chief Steward designated by the Union for the purpose of attending the Union's Stewards meeting, if such a meeting is scheduled.

12.9 Alternative to the Grievance Procedure

- 12.9.1 As an alternative to the formal grievance procedure, IBEW and the Office of Employee Relations may meet on an informal basis and attempt to resolve problems which arise involving contract interpretation, Civil Service Rules, Personnel Administrative Manual (PAM), or other matters affecting the relationship between the Union and the City.
- 12.9.2 The Office of Employee Relations and IBEW may review an issue on an ad hoc basis on its merits and its relationship to the contract. The result of these discussions may be:
- 1) To create a side agreement;

- 2) To defer the issue until the next contract;
- 3) To change a practice to conform to the provisions of the contract; and/or
- 4) To maintain the status quo.

12.9.3 If the issue can not be resolved through this process, the Union maintains the option to proceed through the grievance procedure, if the issue is grievable in accordance with the definition of section 12.1 of this Memorandum of Agreement.

ARTICLE 13 LEAVES OF ABSENCE

- 13.1 By written request of the employee through the "Request for Leave of Absence" form, the appointing authority, or designated representative, may grant an employee a leave of absence without pay for good and sufficient reason not to exceed twelve (12) months. Such leaves may, however, be extended not to exceed an additional six (6) months upon written request of the employee, subject to approval of the appointing authority, or his/her designated representative. Written requests for an extension of a leave shall be submitted prior to the expiration of the leave.
- 13.2 Any leave granted pursuant to the provisions contained herein may be canceled by the appointing authority by notice in writing mailed to the employee at the employee's address on file in the Human Resources Department or such other address as the employee may designate. Such notice shall be by registered mail, return receipt requested and shall be mailed not later than thirty (30) days prior to the effective date of the cancellation of the leave. Failure of the employee to return to work on the first scheduled workday after the effective date of the cancellation, or on the first scheduled workday following the expiration of a leave, shall be considered to have voluntarily resigned unless the failure to return is due to extenuating circumstances beyond the control of the employee. Each employee who is granted a leave pursuant to the provisions of this Article shall, upon return from leave, be entitled to the position within the classification held by the employee at the time the leave commenced.
- 13.3 If the position to which an employee would otherwise be entitled pursuant to the above has been deleted from the department's budget during the term of the employee's leave of absence, the employee shall, upon return from leave, be entitled to a position within the classification held by the employee at the time the leave commenced, provided there is either a vacancy in such classification or an employee in the classification with less seniority whose duties the returning employee is qualified to perform.
- 13.4 The employee is responsible for coordinating the return to work following a leave of absence. Prior to returning from a leave of absence, the employee shall contact the supervisor to ensure that all necessary documents have been completed and steps taken.
- 13.5 For purposes of this Article, seniority shall be defined in accordance with Subsection 14.4.1 of Article 14, entitled Layoff.
- 13.6 Any employee who is absent without notification to his/her Department Head, or other designated authority, for two (2) consecutive work shifts, shall be considered to have voluntarily resigned unless the failure to report is due to extenuating circumstances beyond the control of the employee.

- 13.7 Employees who have been separated from City service for failure to return from leave, or failure to report and whose failure is determined to be the result of extenuating circumstances beyond their control shall be reinstated.

ARTICLE 14 LAYOFF

14.1 Order of Layoff

When one or more employees in the same class in a City department are to be laid off for lack of work, purposes of economy, curtailment of positions or other reason, the order of layoff shall be as follows:

- 14.1.1 Provisional employees in the order to be determined by the appointing authority.
- 14.1.2 Probationary employees in the order to be determined by the appointing authority.
- 14.1.3 Permanent employees in inverse order of seniority within the classification being reduced, or in a higher class.
- 14.1.4 Permanent employees shall be given every opportunity for transfer to other departments when layoff is pending.

14.2 Notice of Layoff

Employees subject to the provisions of this Article shall, wherever possible, be given at least thirty (30) calendar days notice in writing prior to the effective date of layoff. The appropriate employee organizations shall receive concurrent notice, and upon written request within seven (7) calendar days after the notice is given shall be afforded an opportunity to meet with the appropriate City representatives to discuss the circumstances necessitating the layoff and any proposed alternatives to such layoff.

14.3 Reassignment in Lieu of Layoff

In the event of layoff, any employee so affected may elect to:

- 14.3.1 Accept a position in a lateral or lower class in which the employee has previously served, or a position in a lateral or lower class within the series containing the class from which the employee is being laid off, provided the employee is otherwise qualified and is more senior than the least senior employee in such lateral or lower class.
- 14.3.2 Accept a vacant position in a lateral or lower class for which the employee has the necessary education, experience, and training as determined by the Human Resources Director. An employee may also accept a vacant position in a higher class provided the employee has held permanent status in such higher class and further provided that the employee's removal from the higher class was voluntary and occurred during the employee's most recent period of employment. Adverse decisions of the Employee Services Director regarding necessary education, experience, and training shall be subject to the grievance procedure including arbitration. The employee may file the grievance at Step

III within ten (10) working days of the date of being notified of the adverse decision.

14.3.3 Any employee entitled to an option noted above, which involves assignment to a lower classification, may elect to be placed on layoff in lieu of accepting such assignment to the lower class. In the event the employee elects to be placed on layoff, such employee will only be recalled to the classification from which he/she elected to be placed on layoff or to any higher classification to which he/she may be entitled pursuant to the provisions of this Article.

14.4 As used in this Article, the following words and phrases shall be defined as follows:

14.4.1 Except as otherwise provided above, seniority shall be defined as the length of continuous paid employment within any permanent class or classes within the classified service of the City. Seniority shall be retained but shall not accrue during any period of leave without pay, except for authorized military leave.

14.4.2 A lower class shall mean a class with a lower salary range.

14.4.3 A position in a lateral class shall mean a position in a class with the same salary range.

14.4.4 A position in a higher class shall mean a position in a class with a higher salary range.

14.5 Except as otherwise provided herein, no employee shall be entitled to a position in a higher class as a result of the application of the provisions of this Article.

14.6 Layoff Reinstatement Eligible List

14.6.1 The names of such persons who are laid off or who elect reassignment in lieu of layoff in accordance with the provisions of 14.3 of this Article shall be placed upon a Reinstatement Eligible List in inverse order of seniority; i.e., the person with the greatest seniority on the Reinstatement Eligible List for the classes affected shall be offered reinstatement when a vacancy exists in the affected class. In the event the person refuses the offer of reinstatement, such person's name shall be removed from the Reinstatement Eligible List unless such person has reinstatement rights under the provisions of this Article to a higher class than the one in which the reinstatement is being refused.

14.6.2 In the event an employee accepts reinstatement to a lower class to which he/she is entitled, such person's name shall remain on the Reinstatement Eligible List for reinstatement to a lateral class provided such person, except for lack of seniority, would have been otherwise entitled to such lateral class at the time of the most recent layoff.

14.6.3 Any person who is reinstated to a class, which is the highest class to which he/she would have been entitled at the time of the layoff, shall have his/her name removed from the Reinstatement Eligible List.

14.6.4 In the event a person on layoff cannot be contacted by the City through usual and customary channels within ten (10) working days, such person's name shall be removed from the Reinstatement Eligible List, providing, however, that such person within the three-year period specified herein may request that

his/her name be replaced on the Reinstatement Eligible List and such person's name may, in the sole discretion of the Human Resources Director, be returned to the Reinstatement Eligible List.

- 14.6.5 In no event shall the name of any person laid off pursuant to the provisions of this Article remain on a Reinstatement Eligible List for a period longer than three (3) years from the effective date of such person's most recent layoff.
- 14.7 Upon reinstatement to any classification to which the employee is entitled pursuant to the provisions of this Article, all benefits acquired by the employee prior to his/her layoff shall also be reinstated. An employee shall not receive credit for time spent on layoff in computing time for any benefit entitlement.

ARTICLE 15 BULLETIN BOARDS

- 15.1 The Union may use designated portions of City bulletin boards in departments that have employees in the Representation Unit for which the employee organization is recognized.
- 15.2 Subject to the provisions contained herein, the following types of Union notices and announcements listed below may be posted on the bulletin boards:
- 15.2.1 Meetings, elections, welfare, recreational and social affairs and such other notices as may be mutually agreed upon between the Union and the Municipal Employee Relations Officer.
- 15.3 All material shall identify the Union responsible for its posting. Copies of all material to be posted must be filed with the Municipal Employee Relations Officer who shall have the whole and exclusive right to order the removal of any objectionable material.
- 15.4 The Municipal Employee Relations Officer shall notify the Union of any material ordered removed. The Union shall be given the opportunity to revise the material to delete the objectionable section or sections.
- 15.5 The City reserves the right to determine where the bulletin boards shall be placed and what portion of such bulletin boards is to be allocated to employee organizations.
- 15.6 Failure of the Union to abide by the provisions of this Article shall result in the forfeiture of the Union's right to have materials posted on City bulletin boards. The City agrees it will not exercise its rights provided herein in an arbitrary and capricious manner.

ARTICLE 16 HOLIDAYS

- 16.1 Except as hereinafter otherwise provided, each full-time employee shall be entitled to paid holiday leave on each of the following specified days and on no other day, during the term of this Agreement:
- | | | |
|--------|------------------------|------------------------|
| 16.1.1 | New Years Day | Columbus Day |
| | Martin Luther King Day | Veterans Day |
| | President's Day | Thanksgiving Day |
| | Cesar Chavez Day | Day After Thanksgiving |
| | Memorial Day | Christmas Eve Day |

Independence Day
Labor Day

Christmas Day
New Year's Eve Day

- 16.1.2 When one of the above holidays falls on a Sunday, the following day shall be designated as the holiday; and when one of the above holidays falls on a Saturday, the preceding day shall be designated as the holiday.
- 16.1.3 An employee shall also be eligible for paid holiday time on any other day proclaimed or designated by the Council of the City of San Jose as a holiday for which full-time employees will be entitled to holiday leave. Should additional holidays be provided or should an existing holiday be traded for a different holiday observance for other represented employees on a citywide basis, such additional holidays or trades shall apply to employees in this unit.
- 16.2 Except as otherwise provided, no such full-time employee shall be required to work on any of said holidays; provided, however, that subject to regulation and control by the City Manager, the head of any department of the City government may specify the days of the week and the hours of such days when any such employee in his/her department or under his/her jurisdiction shall be required to work, and may require any such employee to work on any or all of said holidays. Except as otherwise provided for employees on alternate work schedules (see section 28.3), each full-time employee who is required to work on any of said holidays shall receive the salary that he/she would be entitled to for that day at the employee's regular rate of pay, and in addition thereto, shall receive compensatory time off duty equal to one and one-half (1-1/2) times the number of hours which he/she works on said holiday.
- 16.3 Said compensatory time off duty shall be credited to such employee in accordance with Article 6, Subsection 6.8 of this Agreement; provided, however, that upon written request by the employee to the Department Head, within not more than thirty (30) calendar days after the holiday when such compensatory time was earned, such employee shall receive and be given, in addition to his/her regular pay for such holiday and in lieu of such compensatory time off, such additional compensation as shall equal the number of hours of compensatory time credited to him/her multiplied by the employee's equivalent hourly rate.
- 16.4 Each part-time employee who is required to work on any of said holidays shall receive the salary that he/she would be entitled to for the hours worked on that day at his/her regular rate of pay, and in addition thereto, he/she shall receive compensation in a sum equal to one-half times his/her regular hourly pay multiplied by the number of hours worked by him/her on such holiday, provided and excepting, however, that no part-time employee who is required to work on any of said holidays and who received a flat daily rate of pay, plus room and board shall be entitled to or shall be paid any compensation in addition to his/her regular flat daily rate of pay plus room and board.
- 16.5 Except as otherwise provided for employees on alternate work schedules (see section 28.3), if any of said holidays falls on a full-time employee's regular day off, during which he/she is not required to work, such employee shall be entitled to compensatory time off duty equal to the number of regularly scheduled hours which the employee works during his or her assigned work day. Said compensatory time off duty shall be credited to such employee in accordance with Article 6, Subsection 6.7 of this Agreement; provided, however, that upon written request by the employee to the Department Head, within not more than thirty (30) calendar days after the holiday when such compensatory time was earned, such employee shall receive and be given, in lieu of such compensatory time

off, such additional compensation as shall equal the number of hours of compensatory time credited to the employee multiplied by the employee's equivalent hourly rate.

- 16.6 The compensation above provided to any employee who may be required to work on any or all of said holidays shall be inclusive of any overtime compensation or other benefits to which such employee may be entitled under the provisions of any other ordinance or resolution of the City of San Jose or other applicable law, and not in addition thereto.

16.7 Holiday Closure

The City Manager may determine that all non-essential City operations close for a Holiday Closure during the Christmas and New Year holidays. In such event, employees shall be encouraged to take time off, however, it shall not be a requirement.

Employees electing to take time off may choose to take vacation, compensatory time, personal leave or lost time during the closure period. Employees who take lost time during the closure shall continue to receive the following accruals: vacation, sick leave, citywide and department seniority.

Eligible employees, who have been employed with the City for less than thirteen (13) biweekly pay periods, may use available vacation leave during the closure.

ARTICLE 17 VACATIONS AND PERSONAL LEAVE

- 17.1 Each eligible full-time employee, who has been employed as such for at least thirteen (13) biweekly pay periods, shall be granted vacation leave with pay in accordance with the following:

- 17.1.1 Full-time employees shall accrue vacation leave for paid hours in the amount specified below for each cycle of 26 full biweekly pay periods immediately preceding December 31st, or portion thereof, in each year of employment as specified:

Years of Service	Accrual Rate per paid hour	Annual Hours of Vacation earned if employee has 2080 paid hours
First 5 years	0.03875	80 hours
6th - 10th year	0.05875	120 hours
11th and 12th year	0.06625	136 hours
13th and 14th year	0.07375	152 hours
15th year or more	0.08125	168 hours

17.1.2 Carry-Over of Vacation Leave

An employee may carry over to the next subsequent cycle of 26 biweekly pay periods, not more than 200 hours of unused vacation leave, together with any earned vacation leave which he/she is prevented from using in the former cycle, during which it is accrued, because of service-connected disability. An employee carrying-over greater than the maximum allowable vacation hours (200 hours) shall have the excess amount deducted from the following year's accrual.

17.1.3 Reimbursement for Unearned Vacation Leave

If the employment of any full-time employee should cease and if he/she should have taken more vacation leave than he/she had accrued at the time of termination of his/her employment, there shall be deducted from his/her final pay, or he/she shall refund to the City such pay as he/she shall have received for vacation leave theretofore taken by him/her. The provisions of this Subsection 17.1.2 shall not apply to any full-time employee whose employment by the City is terminated by reason of his/her death, or his/her entry into active duty with any of the Armed Forces of the United States that is reasonably likely to exceed one (1) year in duration.

17.1.4 Payment for Unused Accrued Vacation Leave upon Termination of Employment

If the employment by the City of any full-time employee should cease, he/she shall be given, at the time of such termination, full pay for vacation leave which he/she may then have accrued and not used.

17.2 Vacation Pay

If, in the judgment of the City Manager it is desirable by reason of a shortage of staffing or increased volume of work, to permit any full-time employee to work for the City during the time ordinarily allocated to such employee for vacation purposes, he/she may authorize such work. An employee who elects to perform such additional work shall be entitled to receive, as additional compensation for such work, an amount of money equal to his/her regular pay for such hours of work if such were not rendered during vacation leave, or, in lieu thereof, he/she may elect, in writing, filed with the Office of Employee Relations, to carry over such leave to the subsequent cycle of 26 biweekly pay periods.

17.3 Vacation Leave

Any and all leaves granted pursuant to this Article shall be granted at such time or times as will not reduce the number of employees below that which is reasonably necessary for the efficient conduct of the public business of such department, except no employee who is authorized to take a leave for vacation purposes shall be required to commence such leave at a time other than the beginning of a work week, unless he/she elects or consents to commence such leave at another and different time. Subject to the above provisions, preference of vacation leave timing in any calendar year shall be given in order of seniority. For purposes of this section "seniority" shall be determined by the relative length of time served by each employee in the classification in which he/she is employed in a department of the City government, and by the length of time during which such employee has worked on any shift, if more than one shift is worked by employees in such classification.

17.4 Computation of Vacation Leave

17.4.1 For purposes of this Article, paid leave of absence from duty by reason of sick leave, holiday leave, vacation leave, disability leave, compensatory time-off, personal leave, or any other paid leave, shall be deemed to be "time worked."

- 17.4.2 Prior periods of employment shall be credited to the employee for purposes of determining vacation eligibility provided that during each such prior employment period, the employee achieved permanent status. An employee in an initial probationary status shall not be permitted to take a vacation during the first 13 pay periods of employment, even though such employee may, upon satisfactory completion of the initial probationary period be entitled to additional vacation pursuant to the above.

17.5 Personal Leave

Effective the first pay period of each payroll year, each full time employee shall be entitled to a maximum of sixteen (16) hours of Personal Leave. Such leave may be scheduled in one-half hour increments, at any time, subject to approval of the supervisor. Personal Leave is not accrued. Any such leave not taken by the date of termination for employees terminating during the year, or by the end of the last pay period in the calendar year for other employees, shall not be paid out nor carried over to subsequent years. Under no circumstances, such as promotion, transfer, and/or rehire, shall an employee receive more than 16 hours of Personal Leave in any given calendar year.

- 17.5.1 Employees hired on or after July 1 shall be entitled to only eight (8) hours of personal leave in the first payroll calendar year of employment.

ARTICLE 18 SICK LEAVE

- 18.1 Each full-time employee shall be entitled to sick leave with pay in accordance with the following provisions:

- 18.1.1 Sick leave shall accrue in an amount equal to the number of hours worked, excluding overtime, multiplied by a factor of 0.04616. Only paid leave for holidays, vacation, disability, compensatory time off, personal leave, or other paid leave shall be considered as time worked for purposes of this section.

- 18.1.2 Accrued sick leave may be utilized if the employee is required to be absent from work on account of non-job related illness or injury; routine medical or dental appointments; or for the care related to the illness of the employee's child, mother, father, spouse, or domestic partner registered with the Department of Employee Services.

Up to 48 hours of accrued sick leave per calendar year may be utilized if the employee is required to be absent for the care related to the illness or injury of the employee's grandchild, brother, sister, father-in-law, mother-in-law, stepfather, stepmother or stepchild.

The provisions of this section related to the use of sick leave for the care related to the illness or injury of the employee's family members as defined above shall expire at the end of the term of this Agreement. In the negotiations for a successor Agreement, the parties shall review and evaluate the appropriateness of this benefit.

- 18.1.2.1 Accrued sick leave may also be utilized for job-related illness or injury in accordance with the provisions of Article 19 Disability Leave, 19.7.1 or if the employee is medically required to be

absent from work between the date an examining physician determines the employee's condition to be "permanent and stationary" and the date the employee is so notified. Such accrued sick leave may not be utilized if the employee is otherwise entitled to temporary disability leave compensation for the above referenced period of time.

Accrued sick leave not to exceed three (3) working days may be granted at the discretion of the Department Director or his/her designated representative, following the notification referred to above. Telephone notice or a notice mailed to the employee's last known address of record shall be determined notice to the employee.

18.1.2.2 Accrued sick leave not to exceed three (3) working days may be granted in circumstances where an alleged job-related illness or injury is involved, but the employee fails to provide medical verification of such job-related illness or injury.

18.1.2.3 Anything in this Article to the contrary notwithstanding, an employee who, pursuant to the provisions of Article 19 of this Agreement, has been receiving temporary disability leave compensation and who has received the maximum allowable amount of such compensation pursuant to Article 19, and who is entitled to Workers' Compensation temporary disability benefits, and has exhausted all other available leave shall be permitted to utilize accrued sick leave subject to the following restrictions: sick leave shall be utilized in one-half (1/2) hour increments, but in no event shall an employee receive an amount, including any Workers' Compensation temporary disability compensation, in excess of such employee's regular base pay.

18.1.2.4 Accrued sick leave also may be used in accordance with Article 25, Catastrophic Illness.

18.1.3 Except as otherwise provided by resolution of the City Council, paid sick leave shall not be allowed for any absence from work occasioned by intoxication, chronic alcoholism or use of narcotics not prescribed by a licensed physician. If approved by the City, an employee who is enrolled and participating in a substance abuse treatment program may use sick leave for absences resulting from participation in such a program. The City may require appropriate verification.

18.1.4 No employee shall be entitled to or be granted sick leave, either with or without pay, unless he or she, or someone on his or her behalf, notifies his or her immediate supervisor or Department Head of his or her intent to take such sick leave, and of the reasons therefore, prior to or within one (1) hour after the commencement of the sick leave provided, however, that the City Manager may waive the requirement of such notice upon presentation of a reasonable excuse of such employee. Departments may require an earlier call-in (prior to the start of the shift) where work crew situation or other departmental needs require. Departments that require early call-in will have a phone recorder or a person assigned to accept calls with 24-hour coverage.

- 18.1.5 An employee may be required to furnish substantiation for any absence for which sick leave payment is requested.
- 18.1.6 A full-time employee of the City shall be entitled to sick leave without any pay if required to be absent from work on account of any non-job related illness, injury or disability, including absences of female employees related to pregnancy or childbirth in all situations where such employee is not entitled to sick leave with pay. Any full-time employee who is unable to return to work after being absent on paid and/or unpaid sick leave for eighteen (18) consecutive or cumulative months in any period of twenty-four (24) consecutive months shall be considered to have voluntarily resigned. The City shall give the employee reasonable notice of its intent to apply this rule prior to processing a termination. Such resignation shall be considered a resignation in good standing and the employee shall therefore be eligible to apply for re-employment pursuant to San Jose Municipal Code Section 3.04.1530. However, an employee who has reached this limit may apply for a leave of absence without pay pursuant to Article 13.
- 18.2 Sick leave payoff shall be given to each full-time employee at the time of retirement or death under one of the following conditions:
- 18.2.1 Federated Retirement Plan
- The employee is:
- 18.2.1.1 a member of the Federated Retirement Plan, and
- 18.2.1.2 retired under the provisions cited in the plan, and
- 18.2.1.3 credited with at least fifteen (15) years of service in this retirement plan, or
- 18.2.1.4 credited with at least ten (10) years of service prior to a disability retirement.
- 18.2.2 Terminated Employee with Vesting Rights
- The employee has:
- 18.2.2.1 terminated his/her service with the City, and
- 18.2.2.2 retained vesting rights in a retirement system according to provisions in the San Jose Municipal Code, and
- 18.2.2.3 following such termination, qualifies for retirement and retires under the provisions cited in the code, and
- 18.2.2.4 has at the time of retirement credit for at least fifteen (15) years of service in the applicable retirement plan.
- 18.2.3 Death During Service

The estate of any full-time employee who dies while in City service and prior to retirement, even though the employee is not credited with at least fifteen (15) years of service in any applicable retirement plan.

18.2.4 Death of Terminated Employee

The estate of any full-time employee who:

18.2.4.1 had terminated service with the City but had retained vesting rights in a retirement system according to provisions in the San Jose Municipal Code, and

18.2.4.2 dies prior to becoming eligible for retirement allowances as cited under provisions of the San Jose Municipal Code, and

18.2.4.3 has at the time of death credit for at least fifteen (15) years of service in the applicable retirement plan.

18.3 Employees who were brought into the City under the consolidation of the communications function will be able to use their County service as credit toward meeting the eligibility requirement for this sick leave pay out per Ordinance 22314.

18.4 Payout shall be determined as follows; If a full-time employee at the time of his/her retirement or death has earned, unused sick leave hours, he/she shall be paid the equivalent of a specific percent of his/her hourly rate of pay at the time of retirement, termination or death, whichever comes first, multiplied by the total number of his/her accumulated and unused hours of sick leave as of the date of his/her retirement or death as follows:

Less than 400 hours: Total hours accumulated x 50% of final hourly rate.

or 400 but less than 800 hours: Total hours accumulated x 60% of final hourly rate.

or 800 - 1200 hours: Total hours accumulated x 75% of final hourly rate.

18.5 Use of previously accumulated sick leave hours:

For purposes of determining the total number of accumulated and unused hours of sick leave of a full-time employee at the time of his/her retirement or death, unused sick leave from prior periods of employment with the City shall be used. Previously accumulated sick leave shall be credited to the employee for use during an employee's current employment period.

ARTICLE 19 DISABILITY LEAVE

19.1 Disability Leave Supplement (DLS)

Disability Leave Supplement (DLS) is the benefit provided pursuant to this Article, which when added to Worker's Compensation Temporary Disability (WCTD) results in providing employees 85% of their regular base salary.

19.2 Eligibility for Disability Leave Supplement

19.2.1 After the initial three day waiting period has been met, and the employee otherwise qualifies for DLS, the employee may utilize DLS for absences required for medical visits related to the injury after his/her return to work if he/she is unable to schedule such visits on non-work hours. DLS for such intermittent absences is subject to authorization by the Worker's Compensation Section. In no event may DLS exceed the limit specified in 19.6.

A full-time employee who is required to be absent from work due to a job related injury or industrial illness and who receives WCTD payments pursuant to Division 1 or Division 4 of the California Labor Code is eligible for DLS. DLS shall be paid only for such period of time as WCTD payments are made. In the event an employee is not eligible for WCTD payments because of the statutory waiting period, DLS shall not be paid for such a waiting period. The employee may use sick leave to cover the waiting period.

19.3 Eligibility for Disability Leave Supplement Linked to Temporary Disability

If the Workers' Compensation Appeals Board of the State of California or any judicial court having jurisdiction should determine that the employee is not entitled to temporary disability (WCTD) compensation, the employee shall not be entitled to Disability Leave Supplement (DLS) benefits. Under such circumstances, any DLS moneys paid to the employee by the city must be returned to the City within one (1) year.

19.4 Ineligible Causes for Disability Leave

An employee shall not be eligible for disability leave, and shall not receive DLS if the injury or illness that causes the absence results from any work voluntarily undertaken by employee from which he has been prohibited from engaging in as determined by a City physician, prior to the date of injury.

19.5 Ineligibility if Offer and Decline of Modified Duty

DLS shall not be provided if the City offers the employee employment at identical or similar classification, within the employee's medical limitations, and the employee refuses or fails to accept duty for which he or she is physically qualified.

19.6 Maximum Term of Disability Leave Supplement

The employee will receive DLS benefits equal to the amount of money which, when added to the WCTD equals 85% of what the employee would have earned at the position from which he or she is disabled for one of the following time periods, whichever is shortest:

- 19.6.1 the time the employee is medically required to be absent due to a work-related injury or illness, after the required three-day waiting period.
- 19.6.2 the period of time WCTD is payable to the employee under the Workers' Compensation provisions of Division 1 or Division 4 of the Labor Code of the State of California.
- 19.6.3 nine (9) calendar months (274 days) or 1560 hours, if not continually absent following date of injury.
- 19.6.4 until the employee is determined to be medically permanent and stationary by any physician, and is no longer eligible for DLS.

19.7 Time Limit for DLS Eligibility

After 1560 hours of DLS, the employee is entitled to no additional compensation for the injury or illness. No employee shall be eligible for DLS five years after the date of the onset of the injury or illness for which he or she is claiming DLS.

19.8 Disability Leave Supplement is in Lieu of Regular Compensation

Employees who receive WCTD and DLS compensation do not receive their regular salary. DLS as described in this Article is in lieu of regular compensation except if the employee returns to work on a part time basis, wherein the employee may supplement part time earnings with disability leave supplement.

19.9 Requirement of Evidence Proving Temporary Disability

The Director of Finance is responsible for determining eligibility for DLS. In making this determination, the Director may require the employee to provide proof of injury or illness, proof that the injury or illness was job related, proof of the disability and how long the injury or illness will last, and proof of other relevant matters as determined by the Director. The Director may require the employee to submit to a medical examination by a physician selected by the City.

19.10 Termination of Disability Leave

An employee who is unable to return to full time regular duty following the expiration of any and all leave provided in this Article and the integration of Sick Leave as provided in Article 18.1.2.3, and of accrued vacation, and compensatory time off, with Workers' Compensation may be considered to have separated from City service. Prior to being separated from City service, each employee is eligible to participate in the City's return to work program.

- 19.10.1 An employee who exhausts all Disability Leave shall be notified that they are subject to the above provision upon expiration of all remaining paid leave. The employee shall also be notified of his/her eligibility to participate in the return to work program.

ARTICLE 20 MAINTENANCE OF MEMBERSHIP

- 20.1 Except as otherwise provided herein, each employee who on March 17, 2002, is a member in good standing of the Organization shall thereafter, as a condition of employment, maintain such membership for the duration of this Agreement, to the extent of paying the periodic dues uniformly required by the Organization as a condition of retaining membership.
- 20.2 Any employee who, on March 17, 2002, is not a member of the Organization, nor any person who becomes an employee after March 17, 2002, shall not be required to become a member as a condition of employment. Any such employee who thereafter becomes a member of the Organization shall thereafter maintain such membership for the duration of the Agreement except as otherwise provided herein.
- 20.3 Any employee who, on March 17, 2002, was a member of the Organization and any employee who subsequently becomes a member may, during the month of March 2005, resign such membership and thereafter shall not be required to join as a condition of

employment. Resignations shall be in writing addressed to the City's Municipal Employee Relations Officer with a copy to the Organization.

- 20.4 The Organization shall indemnify the City and hold it harmless against any and all suits, claims, demands and liabilities that may arise out of or by reason of the application of or implementation of the provisions of this Article.

ARTICLE 21 AUTHORIZED REPRESENTATIVES

- 21.1 For purposes of administering the terms and provisions of the various ordinances, resolutions, rules and regulations adopted pursuant to this Memorandum of Agreement:

21.1.1 Management's principal authorized agent shall be the Municipal Employee Relations Officer, or his/her duly authorized representative except where a particular Management representative is otherwise designated.

21.1.2 The employee Organization's principal authorized agent shall be the Business Manager, or his/her duly authorized representative.

ARTICLE 22 SEPARABILITY

Notwithstanding any other provisions of this Agreement to the contrary, in the event that any Article, or subsections thereof, of this Agreement shall be declared invalid by any court of competent jurisdiction, or by any applicable State or Federal law or regulation, or should a decision by any court of competent jurisdiction or any applicable State or Federal law or regulation diminish the benefits provided by this Agreement, or impose additional obligations on the City, the parties shall meet and confer on the Article or subsections thereof affected. In such event, all other provisions of this Agreement not affected shall continue in full force and effect.

ARTICLE 23 BEREAVEMENT LEAVE

- 23.1 Each full-time employee shall be granted Bereavement Leave with full pay for up to 40 work hours to attend to the customary obligations arising from the death of any of the following relatives of such employee or employee's spouse or employee's domestic partner. All leave must be used within 14 calendar days following the death of an eligible person. Under extreme circumstances, the 14 day requirement may be waived by the Director of Employee Relations. The decision of the Director of Employee Relations shall be final, with no process for further appeal:

- a) Parent/Step-parent
- b) Spouse
- c) Child/Step-child
- d) Brother/Sister/Step-brother/Step-sister/Half-brother/Half-sister
- e) Grandparent/Step-grandparent
- f) Great grandparent/Step-great grandparent
- g) Grandchild
- h) Brother/Sister-in law/Son/Daughter-in-law

23.1.1 A domestic partner, as referenced in Section 23.1 must be the domestic partner registered with the Department of Employee Services.

- 23.2 Anything hereinabove to the contrary notwithstanding, no such employee shall be granted Bereavement leave in the event of the death of any of the above relatives, if such employee is not scheduled to work when such bereavement leave is required.

ARTICLE 24 RETIREMENT

- 24.1 Current retirement benefits will continue during the term of this Agreement, except as described herein, and shall be set forth in the Municipal Code.
- 24.1.1 If an employee receives a service-connected disability retirement, pursuant to an application for such retirement made on or after July 13, 1986, the retirement benefit will be offset by subsequent workers' compensation payments except for survivorship benefits and permanent disability payments for retirees receiving a 100% permanent disability rating.
- 24.1.2 Administrative cost of the Federated Retirement System, including staff salaries and indirect labor costs, are to be paid from the retirement fund. Costs to the fund for staff salaries and indirect labor costs shall not exceed 0.10% of assets in the fund per year.

ARTICLE 25 CATASTROPHIC ILLNESS OR INJURY TIME DONATION PROGRAM

- 25.1 Policy Statement This provision is designed to assist an employee who has exhausted paid leave time due to a critical medical condition of the employee or an eligible family member. This provision allows other employees to donate leave in accordance with the following terms so an employee may continue in a paid status with the City for a longer period of time.
- 25.2 Definitions For purposes of this article the following definitions shall be used.
- 25.2.1 Eligible Employee. A full or part-time benefited employee.
- 25.2.2 Eligible Family Member. 1) A legal spouse or registered domestic partner. 2) A person under 18 years of age, or a person incapable of self-care because of a physical or mental disability who is a biological, adopted, foster or step child, or a ward of the employee. 3) A person for whom the employee is charged with a parent's legal rights, duties and responsibilities.
- 25.2.3 Catastrophic Illness or Injury. A critical medical condition considered to be life-threatening, terminal, or a long-term major physical impairment or disability.
- 25.3 Employee Catastrophic Illness or Injury Leave Donation An eligible employee may receive donations of accrued vacation and/or compensatory time which shall be converted to sick leave and added to the employee's sick leave balance if the employee has suffered a non-job related catastrophic illness or injury which prevents the employee from being able to work.
- 25.4 Care For Eligible Family Member An eligible employee may receive donations of accrued vacation and/or compensatory time which shall be converted to sick leave and added to the employee's sick leave balance if the employee is required to be absent from work to care for an eligible family member who has a catastrophic illness.

- 25.5 Eligibility For Donated Leave To be eligible to receive donated paid leave, the recipient employee's illness or injury, or necessary care of an eligible family member, must require the employee to be absent for a minimum of 30 consecutive calendar days, or 30 cumulative work days within the six previous months. The recipient employee must have exhausted all available paid leave prior to using donated leave, however, the request may be initiated prior to the anticipated date leave balances will be exhausted. Retroactive donations shall not be permitted.
- 25.6 Use Of Sick Leave For Eligible Family Member In the event an employee becomes eligible for donated leave due to the catastrophic illness of an eligible family member, the employee shall be eligible to use accumulated sick leave once the employee has exhausted all other available paid leave, pursuant to Article 18.1.2. However, the employee must meet all of the requirements of the donated leave program and submit appropriate medical verification in order to be eligible to use earned sick leave.
- 25.7 Application The recipient employee, recipient employee's family, or other person designated in writing by the recipient employee, must submit a written request along with medical verification to the Employee Services Department.
- 25.8 Medical Verification Medical verification, including diagnosis and prognosis, must be provided by the recipient employee and a copy submitted to Employee Health Services in the Employee Services Department. Employee Health Services shall review the medical verification, consult with the treating physician, and determine whether or not the illness/injury is catastrophic.
- 25.9 Maximum Donation A recipient employee is eligible to receive a total maximum of 1040 hours of donated leave time during their employment with the City. The amount of donated leave time available to an employee shall be appropriately prorated for benefited part-time employees
- 25.9.1 Increase to Maximum Donation. If an eligible employee exhausts the maximum 1,040 hours of donated leave and if the employee's or eligible family member's catastrophic illness or injury prevents the employee from returning to work, the employee or the employee's designee may apply for an increase of the maximum to 2,080 total hours of donated leave. Application for the increased maximum shall be made to the City Manager through the Office of Employee Relations. The application shall include a recommendation from the Department Director and shall be evaluated based upon the operational impact on the employee's department and subject to re-verification of the medical condition to determine if the illness or injury still qualifies as catastrophic and prevents the employee from returning to work. The denial of an application for an increase to the maximum donated leave is final and is not subject to the grievance procedure.
- 25.10 Increments Donations of vacation and/or compensatory time shall be made in increments of full or half (0.5) hours and are irrevocable.
- 25.11 Conversion Donations shall be on a dollar for dollar basis. The value of donated leave time shall be calculated at the donor's regular pay rate, then converted to hours of sick leave at the recipient's regular pay rate to the nearest half (0.5) hour to determine the number of hours of sick leave available to recipient. For employees covered by the City's salary continuation insurance plan, use of donated leave will be an offset to benefits in accordance with the provisions of that plan.

- 25.12 Unused Donations Unused hours remaining when the recipient returns to work or is separated from employment with the City shall be retained by the recipient. In the event of the death of the recipient while still employed by the City, any donated unused leave time remaining at the time of death will be paid to the recipient's estate at 100% of the value at the employee's final hourly rate.

ARTICLE 26 PROBATIONARY PERIOD

- 26.1 Probationary periods shall not be less than six (6) or twelve (12) months of actual service as determined by the Civil Service Commission. Actual service shall mean regular hours worked, paid holidays and up to 80 hours of other cumulative or consecutive paid or unpaid absences.
- 26.2 An employee's probationary period may be extended at the discretion of the City up to a maximum of three (3) months of actual and continuous service. The employee will be notified in writing of the length and reason of the extension. The employee will be provided with a copy of their performance appraisal and a copy of the memo from the department to Human Resources which outlines the reasons for the request for extension.

ARTICLE 27 ALTERNATE DISCIPLINE

As an alternative to suspension, demotion or dismissal, the appointing authority may reduce an employee's salary step up to no more than two steps in a case involving a loss of driving privileges or attendance problems (excluding authorized paid sick leave). The amount and length of time of the salary reduction will be specified in the Notice of Intended Discipline. The salary may be reduced either for a specified period of time or until the condition which caused the salary reduction has been corrected; e.g., reinstatement of city driving privileges. The employee may appeal this action, including the amount and the length of time, to the Civil Service Commission according to the same rules as apply to other formal disciplinary appeals. Reduction of salary step may continue to be used for voluntary settlement agreements.

ARTICLE 28 ALTERNATIVE WORK SCHEDULE

- 28.1 The City and the Union agree that the availability of Alternative Work Schedules is a valuable benefit to employees in that it promotes job satisfaction, and is of benefit to the city in that it reduces traffic congestion and demands on limited parking facilities. The use of alternate schedules is encouraged, where it can be accommodated without impairing departmental operations or public service.
- 28.2 As an alternative to the normal work schedule assigned by the department in accordance with Article 6.3, and subject to the concurrence and approval of respective Department Heads and the City Manager, a regular full-time employee may elect to work an alternative work schedule. The following conditions and restrictions apply to all employees electing an alternative schedule.
- 28.2.1 An employee may elect to establish a biweekly work schedule which varies from the normal schedule in the number of hours worked per day and in the number of days worked per week, except that no single workday may exceed ten (10) hours and total scheduled biweekly hours are not to exceed eighty (80) hours. Unless otherwise specified in this Memorandum of Agreement,

alternate schedules shall not include paid lunch periods. The employee may elect a different schedule for each calendar week within a biweekly period. Examples of schedules that may be elected include:

- Four 10-hour days each week (4/10's)
- Four 9-hour days and one 4-hour day each week (9/80's)
- Eight 9-hour days, one 8-hour day, and one day off each pay period

28.2.2 No alternate work schedule may be established in which overtime is incurred as a part of the established work schedule either under this agreement or under Federal or State law.

28.2.3 The alternate schedule is designed to accommodate the needs of the employee and the work unit. Once elected and approved, it is intended to continue for an indefinite period. However, should the needs of the employee or work unit dictate, the alternate schedule may be terminated with reasonable notice.

28.2.4 It is further understood that any alternate schedule agreement entered into pursuant to the provisions herein, shall terminate immediately upon the date of the transfer, promotion, or demotion of the employee.

28.2.5 For a schedule of four 10-hour days, the three (3) consecutive days off may be waived by mutual agreement.

28.3 Holidays and Other Paid Leave for Alternate Schedules

The following provisions for holiday and other paid leave shall apply to employees on an alternate work schedule.

28.3.1 If an employee takes paid leave (e.g., holiday, sick leave, vacation, compensatory time off, jury duty, bereavement leave, personal leave, etc.) on a scheduled work day, he/she shall be entitled to pay for the number of hours he/she was scheduled to work that day.

28.3.2 If a holiday is observed on an employee's day off, he/she shall be credited with eight (8) hours compensatory time off at the 1.0 rate for a full day holiday. The exception to this policy is stated in section 28.4, below.

28.3.3 If an employee on an alternate schedule works on a holiday, the employee shall receive eight (8) hours of compensatory time at the 1.0 rate for a full day holiday and in addition shall receive pay or compensatory time off at the 1.5 rate for the number of hours actually worked.

28.4 For employees who were placed on an alternate work schedule prior to November 1, 1993, if any of said holidays falls on a full-time employee's regular day off, during which he/she is not required to work, such employee shall be entitled to compensatory time off duty equal to the number of regularly scheduled hours which the employee works during his or her assigned work day.

28.5 Any employee who begins an alternative work schedule after November 1, 1993, will be compensated for holidays according to the provisions of Article 28.3.

ARTICLE 29 NON-DISCRIMINATION

The City and the union agree that they, and each of them, shall not discriminate against any employees because of membership or lack of membership in the union or because of any authorized activity on behalf of the union. Further, any claims of discrimination made by a represented employee as per this Article 29, may be appealed through the grievance procedure outlined in this agreement.

ARTICLE 30 EMPLOYEE ASSISTANCE REFERRAL

- 30.1 Performance problems are sometimes related to personal or work-related problems, which may be improved through the Employee Assistance Program (EAP). There are four ways an employee may be referred to the EAP. The employee may self refer (self referral), a supervisor may informally remind the employee of the EAP services (informal supervisory referral), a supervisor may formally discuss the issue with the employee and a management consultant at the EAP (formal supervisory referral), or the supervisor may require the employee to attend one initial screening session with the EAP (mandatory referral).
- 30.2 If a supervisor believes that an employee's work performance is impaired and can be improved through the EAP and has declined the formal supervisory referral, he or she, with department director approval, may require the employee to attend one initial screening session with the EAP.
- 30.3 The employee shall receive paid release time to attend the initial appointment and must sign a Release of Information form that authorizes the EAP provider to release information limited to dates of service and attendance. Failure to attend or to provide proof of such attendance through the Release of Information form may subject the employee to disciplinary action. Actual results of the initial screening shall be subject to normal confidentiality provisions, unless the employee voluntarily signs a release of information form that authorizes release of information beyond dates of service and attendance. The employee's decision to attend or not attend follow-up sessions shall be voluntary. Follow-up sessions shall be on the employee's own time. This may include the approved use of sick leave, vacation, comp-time, or personal leave.
- 30.4 Nothing in this article shall preclude an employee voluntarily agreeing to different conditions as part of a disciplinary settlement agreement.

ARTICLE 31 ADVANCE NOTICE

- 31.1 The City may adopt, change or modify work rules. Whenever the City changes work rules or issues new work rules, the Union will be given at least five (5) days prior notice, absent emergency, before the effective date, in order that the Union may discuss said rules with the City before they become effective if the Union so requests.
- 31.1.1 When a Department makes a policy change that impacts wages, hours, or terms and conditions of employment, that policy change should first be sent to the Office of Employee Relations for review prior to implementation. Once reviewed by Employee Relations, pursuant to Article 31.1, said changes should be provided to the Union for review.

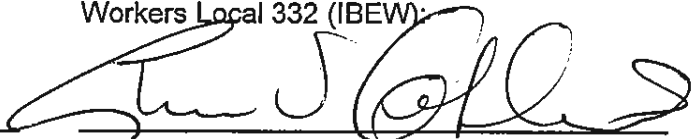
THIS AGREEMENT executed on the 13th day of March 2005 between the City of San Jose and the International Brotherhood of Electrical Workers, Local No. 332, in WITNESS thereof, the appropriate Representatives of the parties have affixed their signature thereto.

This Memorandum of Agreement is subject to approval by the City Council of the City of San Jose and the appropriate Representatives of the International Brotherhood of Electrical Workers, Local No. 332.

For the City of San Jose:


Del D. Borgsdorf, City Manager

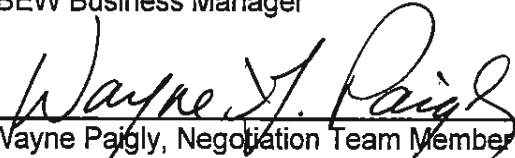
For the International Brotherhood of Electrical Workers Local 332 (IBEW):

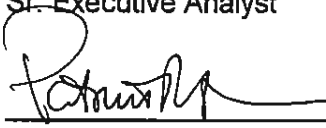

Charles Gebhardt, Lead Negotiator
Chief Steward

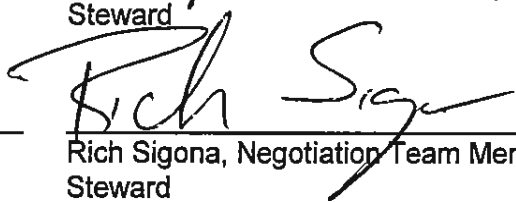

Gina Donnelly, Lead Negotiator
Employee Relations Manager

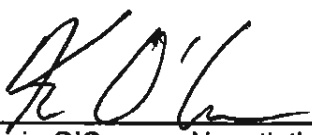

Sal Ventura, Negotiation Team Member
IBEW Business Manager


Aracely Rodriguez, Negotiation Team Member
Sr. Executive Analyst


Wayne Paigly, Negotiation Team Member
Steward


Patrick Tonna, Negotiation Team Member
Deputy Director, Airport


Rich Sigona, Negotiation Team Member
Steward


Kevin O'Connor, Negotiation Team Member
Deputy Director, Department of Transportation


Larry Snyder, Negotiation Team Member
Steward

EXHIBIT "I"
IBEW SALARY SCHEDULE

2005/2006 Salary Effective March 14, 2004

Job Code	Job Title	Hourly 1st	Hourly Top	Biweekly 1st	Biweekly Top
8526	Communications Installer	\$26.04	\$31.65	\$2,083.20	\$2,532.00
8527	Communications Instlr PT	\$26.04	\$31.65	\$2,083.20	\$2,532.00
8525	Communications Technician	\$33.23	\$40.41	\$2,658.40	\$3,232.80
3153	Electrician	\$33.23	\$40.41	\$2,658.40	\$3,232.80
3155	Electrician Supervisor	\$40.41	\$49.11	\$3,232.80	\$3,928.80
3762	Instrument Control Supvr	\$40.41	\$49.11	\$3,232.80	\$3,928.80
3761	Instrument Control Technician	\$33.23	\$40.41	\$2,658.40	\$3,232.80
8524	Senr Communic Technician	\$36.65	\$44.53	\$2,932.00	\$3,562.40
3154	Senr Electrician	\$36.65	\$44.53	\$2,932.00	\$3,562.40
8529	Senr Electronic Syst Tech	\$36.65	\$44.53	\$2,932.00	\$3,562.40
3763	Senr Instrument Control Tech	\$36.65	\$44.53	\$2,932.00	\$3,562.40

2006/2007 Salary Effective March 12, 2006 (1.5% increase)

Job Code	Job Title	Hourly 1st	Hourly Top	Biweekly 1st	Biweekly Top
8526	Communications Installer	\$26.43	\$32.12	\$2,114.40	\$2,569.60
8527	Communications Instlr PT	\$26.43	\$32.12	\$2,114.40	\$2,569.60
8525	Communications Technician	\$33.73	\$41.02	\$2,698.40	\$3,281.60
3153	Electrician	\$33.73	\$41.02	\$2,698.40	\$3,281.60
3155	Electrician Supervisor	\$41.02	\$49.85	\$3,281.60	\$3,988.00
3762	Instrument Control Supvr	\$41.02	\$49.85	\$3,281.60	\$3,988.00
3761	Instrument Control Technician	\$33.73	\$41.02	\$2,698.40	\$3,281.60
8524	Senr Communic Technician	\$37.20	\$45.20	\$2,976.00	\$3,616.00
3154	Senr Electrician	\$37.20	\$45.20	\$2,976.00	\$3,616.00
8529	Senr Electronic Syst Tech	\$37.20	\$45.20	\$2,976.00	\$3,616.00
3763	Senr Instrument Control Tech	\$37.20	\$45.20	\$2,976.00	\$3,616.00

2007/2008 Salary Effective March 11, 2007 (3.75% increase)

Job Code	Job Title	Hourly 1st	Hourly Top	Biweekly 1st	Biweekly Top
8526	Communications Installer	\$27.42	\$33.32	\$2,193.60	\$2,665.60
8527	Communications Instlr PT	\$27.42	\$33.32	\$2,193.60	\$2,665.60
8525	Communications Technician	\$34.99	\$42.56	\$2,799.20	\$3,404.80
3153	Electrician	\$34.99	\$42.56	\$2,799.20	\$3,404.80
3155	Electrician Supervisor	\$42.56	\$51.72	\$3,404.80	\$4,137.60
3762	Instrument Control Supvr	\$42.56	\$51.72	\$3,404.80	\$4,137.60
3761	Instrument Control Technician	\$34.99	\$42.56	\$2,799.20	\$3,404.80
8524	Senr Communic Technician	\$38.60	\$46.90	\$3,088.00	\$3,752.00
3154	Senr Electrician	\$38.60	\$46.90	\$3,088.00	\$3,752.00
8529	Senr Electronic Syst Tech	\$38.60	\$46.90	\$3,088.00	\$3,752.00
3763	Senr Instrument Control Tech	\$38.60	\$46.90	\$3,088.00	\$3,752.00

EXHIBIT "II"
SUBSCRIPTION AGREEMENT

WHEREAS: The undersigned employer, performing work within the craft jurisdiction of IBEW Local #332, AFL-CIO, has employees performing electrical maintenance work; and

WHEREAS: Said employer requires that its employees performing electrical maintenance work be trained by the Santa Clara County Electrical Trades Apprenticeship Training Committee; and

WHEREAS: The undersigned employer has applied for and received from the Santa Clara County Electrical Trades Apprenticeship Training Committee certification approving it for employment and training of apprentices under its duly approved apprentice standards as required by Section 1777.5 of the Labor Code of the State of California.

SO NOW IT IS HEREBY AGREED as follows:

1. Apprentices of employer doing electrical maintenance work shall be trained by the Santa Clara County Electrical Trades Apprenticeship Training Committee pursuant to the duly approved Apprenticeship standards as required by Section 1777.5 of the Labor Code of the State of California.
2. The undersigned employer agrees to employ no more than one (1) apprentice to every three (3) journeymen upon work.
3. The undersigned employer agrees to pay on behalf of hours worked by all electrical employees in the following classifications:
 - a. Apprentice Electrician;
 - b. Electrician;
 - c. Senior Electrician;
 - d. Electrician Foreman;

Contributions to the Santa Clara County Electrical Trades Apprenticeship Training Trust Fund (Trust Fund) at the rate provided for the applicable Memorandum of Agreement with IBEW Local #332 and the City of San Jose.

4. All payments due to said Trust Fund shall be due and payable at the offices of the Santa Clara County Electrical Trades Training Trust Fund, 2075 Camden Avenue, San Jose California 95124, quarterly, on or before the 5th day of the second month following the last month of each calendar quarter (e.g., the payment for a quarter ending December 31, 1980, would be due on or before February 5, 1981). The first quarter for which such payment shall be made is October 1, 1980, to December 31, 1980. Each such quarterly payment shall be for work performed in each bi-weekly pay period of the City of San Jose, which ends during that quarter.
5. In respect to all payments the Trust Fund as provided in paragraph 4 above, time is of the essence. The parties hereto recognize and acknowledge that the prompt payments of amounts due by the employer pursuant to this agreement are essential to the maintenance and effect of the Trust Fund, and that it would be extremely difficult, if not impracticable, to fix the actual expense and damage to the parties hereto and to the Trust Fund which would result from the failure of an employer to make the quarterly payments in full within the time provided. Therefore, it is agreed that the amount of damages to the Trust Fund and to the parties hereto resulting from any such failure shall be by way of liquidated damages, and riot assessment or penalty, the sum of twenty-five dollars (\$25.00) for each such failure to pay in full within such time limits provided, or ten percent (10%) of the amounts due and unpaid,

whichever is the greater, which said amount or amounts of liquidated damages shall become due and payable to the Fund at its principal office, upon the day immediately following the date on which the employer became delinquent and shall be added to and become a part of the amount or amounts due and unpaid, and the whole thereof shall bear interest at the rate of seven percent (7%) per annum until paid.

In the event an action is brought under this contract by one party against the other, the prevailing party in whose favor final judgment is rendered shall be entitled to recover from the other its costs of suit and reasonable attorney fees, to be fixed by the Court in which such judgment is entered.

6. It is understood and agreed by and between the parties hereto that this agreement shall be deemed and construed to be entered into and to be performed in the County of Santa Clara, State of California, and it is further understood and agreed by and between the parties hereto that the law of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this agreement and also govern the interpretation of this agreement. It is also understood and agreed between the parties hereto that any litigation between them concerning or arising out of this agreement shall be filed and maintained exclusively in the Municipal or superior courts of Santa Clara County, State of California, to the fullest extent permissible by law.
7. Employer shall have the right to terminate this agreement upon thirty (30) days' notice to the Trust Fund at 2075 Camden Avenue, San Jose, California.

IN WITNESS WHEREOF the parties have subscribed, or cause to be subscribed, their names by their officers or representatives thereunto duly authorized on this 30 day of September, 1980.

**CITY OF SAN JOSE,
A MUNICIPAL CORPORATION**

S/By Helen E. Jackson
City Clerk
Employer

**SANTA CLARA COUNTY ELECTRICAL
APPRENTICESHIP TRAINING TRUST**

S/By Paul R. Leslie, Chairman
Trustee

S/ By James W. Evans

EXHIBIT "III"
Substance Abuse Program and Policy

Purpose

The purpose of the Substance Abuse Program is to provide guidelines for self-referral and rehabilitation options for employees that may be experiencing a problem with alcohol and/or drug use as well as "for cause" alcohol and/or drug testing for the detection and deterrence of alcohol and drug abuse. It also outlines the responsibilities of management and employees.

It is the policy of the City of San Jose to maintain a safe, healthful and productive work environment for all employees. To that end the City will act to eliminate any substance abuse (alcohol, illegal drugs, prescription drugs or any other substance which could impair an employee's ability to safely and effectively perform the functions of the particular job) which increases the potential for accidents, absenteeism, substandard performance, poor employee morale or tends to undermine public confidence in the City's workforce. This is a "for cause" testing program and not intended to be a random testing policy. Testing under this program must meet the reasonable suspicion criteria established in this policy.

All persons covered by this policy should be aware that violations of the policy may result in discipline, up to and including termination.

In recognition of the serious duty entrusted to employees of the City, with knowledge that drugs and alcohol do hinder a person's ability to perform duties safely and effectively, the following policy against drug and alcohol abuse is hereby adopted by the City of San Jose.

Application

A. Personnel

1. Full-time and permanent benefited part-time employees represented by: International Brotherhood of Electrical Workers, Local #332.

B. Substances

1. alcohol;
2. illegal drugs; and
3. prescription drugs and other substances which may impair an employee's ability to effectively perform the functions of the job.

Policy

It is the policy of the City that employees:

- shall not report to work under the influence of alcohol or drugs or exhibit symptoms of alcohol or drug use;
- while on duty shall not use, possess, sell or provide drugs or alcohol;
- shall not have their ability to work or be paid stand-by impaired as a result of the use of alcohol or drugs.

An employee shall not report to work when any medications, drugs, and/or alcohol he/she is taking create an unsafe and dangerous situation.

In the event there are questions regarding an employee's ability to safely and effectively perform assigned duties while using such medications or drugs, clearance from the City physician will be required. If an employee is prescribed medication or drugs in relation to a work-related injury or illness, the doctor treating the employee for the work-related injury or illness shall provide the required clearance.

The City has established an Employee Assistance Program (EAP) to assist those employees who voluntarily seek help for alcohol or drug problems. Employees could contact their supervisors or the Employee Services Department for additional information.

Employees reasonably believed to be under the influence of alcohol or drugs, as described under the **Management Responsibilities and Guidelines Section, Paragraph B**, shall be prevented from engaging in further work and shall be instructed to wait for a reasonable time until an authorized department representative can transport the employee from the worksite to home or an appropriate medical facility.

Violations of this policy shall be grounds for disciplinary action, up to and including discharge for serious or repeated infractions. Refusal to submit immediately to an alcohol and/or drug analysis, pursuant to this policy, when requested by management will constitute insubordination which alone will form a basis for discipline.

Employee Responsibilities

An employee must:

- A. not report to work while his/her ability to perform job duties is impaired due to alcohol or drug use;
- B. not possess or use, or have the odor of alcohol or drugs on his/her breath during working hours while operating any City vehicle or equipment;

- C. not directly or through a third party sell or provide drugs or alcohol to any person or to any other employee while either employee or both employees are on duty, or paid stand-by;
- D. submit immediately to requests for alcohol and/or drugs analysis pursuant to this policy when requested by an authorized representative of a department head and may request a union representative;
- E. not operate City equipment, or engage in any work related activity when taking any medications, drugs prescription or non-prescription, and/or alcohol which may create an unsafe or dangerous situation for the employee, the public, or the employee's co-workers, including but not limited to valium, muscle relaxants, and painkillers, and
- F. provide within 24 hours of request a current valid prescription for any drug or medication identified when a drug screen/analysis is positive. The prescription must be in the employee's name.

Management Responsibilities and Guidelines

- A. Managers and supervisors are responsible for consistent enforcement of this policy, i.e., that refusal constitutes insubordination that will result in disciplinary action. Any supervisor who knowingly permits a violation of this policy by employees under his/her direct supervision shall be subject to disciplinary action.
- B. A department head or authorized representative may request that an employee submit to a drug and/or alcohol analysis when a manager or supervisor has a reasonable suspicion that an employee is intoxicated or under the influence of drugs or alcohol. "Reasonable suspicion" is a belief based on objective and articulable facts sufficient to lead a reasonable prudent supervisor to suspect that an employee is under the influence of drugs or alcohol so that the employee's ability to perform the functions of the job is impaired or so that the employee's ability to perform his/her job safely is reduced.

For example, any of the following, alone or in combination, may constitute reasonable suspicion:

1. A pattern of documented abnormal or erratic behavior;
2. Direct observation of drug or alcohol use; or information provided by a reliable and credible source that an employee has engaged in drug or alcohol use, the identity of which source shall be available to the employee and the Union;
3. Presence of the mental or physical symptoms of drug or alcohol use (e.g., glassy or bloodshot eyes, alcohol odor on breath, slurred speech, poor coordination and/or reflexes);
4. A work related accident in conjunction with other facts which together support reasonable cause.

- C. Any manager or supervisor should immediately notify another supervisor to meet him/her to observe the employee's behavior prior to requesting an employee to submit to a drug and/or alcohol analysis. If the employee requests union representation, the employee will be allowed the opportunity to secure such representation. If an employee believes any other City employee not under his supervision has a problem and should be tested or referred, he/she should contact the **Office of Employee Relations (OER)** who will notify the Department Director or designee. Should the Department Director or designee concur that the employee appears to be in violation of the policy, the following procedure shall immediately be applied:
1. The manager or supervisor shall document in writing the facts constituting reasonable suspicion that the employee in question is intoxicated or under the influence of drugs.
 2. Any manager or supervisor requesting an employee to submit to a drug and/or alcohol analysis shall be responsible for the employee's transport to the City's designated Employee Health Services or emergency room where a drug and/or alcohol test will be requested.
 3. Any manager or supervisor encountering an employee who refuses to submit to a drug and/or alcohol analysis upon request shall remind the employee of the requirements and consequences of this policy. The manager or supervisor should ask the employee to wait a reasonable time until an authorized City representative can transport the employee home.
 4. Managers and supervisors shall not physically search employees.
 5. Managers and supervisors shall notify their respective departments when they have reasonable suspicion to believe that an employee may have illegal drugs in his or her possession or in an area not jointly or fully controlled by the City.
 6. Managers and supervisors shall not confiscate from an employee, without consent, prescription drugs or medications for which the employee has a prescription.
 7. The employee will be informed of the requirement that he or she undergo testing in a confidential manner, by one of the supervisory employees who made the reasonable suspicion determination.
- D. A manager or supervisor may require an employee to attend an initial screening session with the Employee Assistance Program (EAP) as an alternative to drug or alcohol testing. The employee shall provide proof of attending the initial appointment. Failure to attend or to provide proof of such attendance may subject the employee to disciplinary action. Actual results of the initial screening shall be subject to disciplinary action. Actual results of the initial screening shall be subject to normal confidentiality provisions. The employee's decision to attend or not attend follow-up sessions shall be voluntary.

E. Demands for drug or alcohol analysis by supervisors/managers, which are determined to be malicious will not be tolerated and will subject the directing individual to disciplinary action. In addition, employees who make accusations that are found to be malicious will be subject to disciplinary action.

F. Results of Drug and/or Alcohol Analysis:

1. Upon a negative result, the employee shall return to work if otherwise fit for duty. All records and documentation shall be purged.
2. If the test result is positive, the following shall apply:

First Offense: In an effort to encourage the employee to take responsibility for his/her problem, first violation of this policy will result in a formal, mandatory referral to the **Employee Assistance Program (EAP)**, using the established referral procedures in addition to any disciplinary action the City may impose for violations of this policy. A written record of this referral will be maintained in a restricted confidential employee medical file. **EAP** will assess the employee's need for treatment. An employee declining to be evaluated by **EAP** may be subject to disciplinary action independent of any other misconduct. Treatment will be offered to the employee on a voluntary basis and the employee will be responsible for thirty percent (30%) of the treatment cost. No disciplinary action will be imposed for refusal of treatment; however disciplinary action may be imposed for the underlying positive test result and any further misconduct.

3. **Second Offense:** During an employee's career, a second opportunity for treatment may be offered in the event of a relapse. Discipline, which could result in termination, will be imposed for the second positive test itself, independent of other misconduct, subject to due process for City employees. If a second treatment program is allowed, the employee will be responsible for the cost.
4. The employee may request a split sample be tested at another facility at City expense to provide a second independent result.

Confidentiality

Laboratory reports or test results, if positive only, shall appear in an employee's confidential medical file. The reports or test results may be disclosed to a department Director and Employee Services Director on a strictly need-to-know basis and to the tested employee upon request. Disclosures, without patient consent, may also occur when: (1) the information has been placed at issue in a formal dispute between the employer and employee; (2) the information is to be used in administering this program; (3) the information is needed by medical personnel for the diagnosis or treatment of the patient who is unable to authorize disclosure.

Procedure: Drug Testing

The City of San Jose Drug Testing Procedures contains procedures for handling testing for drugs if the test is conducted by the City's Employee Health Services during normal business hours. Tests required on nights or weekends will be handled in a medical facility determined by the City.

Presence of drugs in the employee's system will be reported as positive in the initial and confirmation test if the amount exceeds the minimum detection levels defined in the City of San Jose Substance Abuse Program and Policy Drug Minimum Detection Levels.

In addition to drug screening, alcohol level will be reported as positive if it is present at greater than or equal to 0.04g.

Substance Abuse Treatment

The City will make substance abuse treatment available to employees represented by the International Brotherhood of Electrical Workers in the following way:

1. Self Referral

- A. If an employee believes he or she has a substance abuse problem, he or she may make a confidential appointment with a counselor at EAP.
- B. The counselor will evaluate the case and determine the appropriate level and type of treatment, if any. The **EAP** will approve a plan and facility. These decisions will be made jointly with the individual seeking treatment.
- C. The counselor will notify the City by an employee code number that treatment and funding is authorized. Claims administration will be handled confidentially as are other health insurance claims.

2. Formal Referrals

- A. If an employee's pattern of work behavior indicates a problem is potentially related to substance abuse, the supervisor may contact the **EAP** and define issues.
- B. The employee will be advised to go to the **EAP** for evaluation. Any participation in treatment is voluntary.
- C. If the employee accepts treatment, the procedures for developing a plan and the payment of bills by the City are the same as for the person who self refers.

3. Positive Drug Test

- A. If an employee tests positive on a drug test the Department Director or designee will contact the EAP and initiate a formal referral. An evaluation by the **EAP** is mandatory. Participation in treatment is voluntary.
- B. The employee will sign a release allowing the **EAP** to advise the City about whether the employee is participating in and cooperating with treatment. No information can be released about the problem or treatment.

4. Funding

The City will pay seventy percent 70% of treatment costs, which are not covered by the employee's health insurance for one treatment program.

The employee will pay the remaining thirty percent 30% of treatment costs for a plan approved by the **EAP** for the employee.

City of San José
Substance Abuse Policy
International Brotherhood of Electrical Workers (IBEW)

SCOPE OF SERVICES

1. Provide gatekeeping and case management chemical dependency problems of employees represented by the International Brotherhood of Electrical Workers (IBEW). This service is to include assessment, referral to high quality treatment facilities, pre-certification, and post treatment case management.
2. Provide orientation to the services provided via programs coordinated through the City Training Program.

COMPONENTS

1. Assessment

Covered employees may be self-referred to the **Employee Assistance Program (EAP)** or referred by a supervisor from the City of San José. **EAP** will provide a clinical assessment for the most appropriate level of treatment (see Tracks A, B, C). Treatment options include:

Structured Inpatient Program: Inpatient facilities are licensed by the California Department of Health Services under two ratings:

- CDRH: Chemical Dependency Recovery Hospital located in an acute-care hospital.
- CDRS: Chemical Dependency Recovery Service which is a free-standing residential facility.

Inpatient treatment may be required when a client has a lengthy history of abuse, is in an advanced stage dependency, has significant associated medical problems, or has little family support. This program would include detoxification waiting period.

Structured Outpatient Program: Outpatient facilities are not currently licensed. This treatment may be appropriate when a client is in the early or middle stages of dependency, is not resistant to treatment, and has family support.

Alcoholics Anonymous and Alanon: When chemical dependency is in an early stage, intensive participation in AA or related affiliates in conjunction with supportive counseling at **EAP** may be appropriate. This approach has proven successful when a client is very strongly motivated to recover and has the support of the family.

2. Referral

Criteria have been developed at **EAP** to assist counselors in making a referral to the most appropriate level of treatment. Counselors are required to document referrals based on these criteria. The Clinical Coordinator reviews all alcohol/drug cases referred to treatment to insure that the most cost effective recommendations are made. Referrals are made to quality programs to insure the best chance of success.

3. Pre-certification

Provide required pre-certification for coverage for all chemical dependency treatment. All covered employees requesting treatment should be directed to **EAP** prior to contacting a treatment facility. **EAP** will evaluate and refer the employee to a recommended facility and notify the City of San José of the referral for billing purposes. Should an emergency or a self-admission be initiated, **EAP** will evaluate the employee within 48 hours and make a recommendation for continued treatment, and notify the City of San José Human Resources/Benefits Division. The following sections outline the steps **EAP** will take in this process.

4. Case Management

EAP counselors will coordinate the chemical dependency treatment of employees from initiation of treatment for up to one year after treatment. This is a critical component of recovery because treatment programs have little investment in clients once they have left their program. Quality case management can reduce the high risk of relapse and assist employees who have relapsed to resume the recovery process. Case management involves the following activities on the part of **EAP**.

- Act as liaison with the treatment program team and City of San José to monitor progress and facilitate the return to work.
- Participate in the development of a recovery plan with the client, the family and the treatment team.
- Continued counseling with client and family as necessary after discharge from treatment facility for one year.
- Should a relapse occur, provide crisis intervention and assistance in developing a stronger recovery plan to increase the involvement of employer, family, after-care team, etc.
- Provide relapse prevention education and therapy groups as appropriate.

5. Treatment Program

Treatment Program is considered to have the following components:

- Inpatient or outpatient treatment, or a combination of both
- Treatment aftercare program
- **EAP** case management for up to a year following treatment

A treatment program is considered ended when all three of the above have been completed or when an employee terminates participation in any of the components.

Treatment will be covered if it is provided by one of **EAP**'s recommended facilities. If these facilities are not used, coverage will be limited to that normally covered under the employee's medical benefits plan.

6. Tracks

There are three sets of procedures (tracks) for initiating chemical dependency treatment:

TRACK A: Assessment at EAP and Referral to Treatment facility

- A. Client is assessed at **EAP** with a chemical dependency problem requiring treatment. If the counselor is clear that outpatient or inpatient is required, the client may be sent directly to the recommended treatment facility and Step B would be initiated.

If the counselor desires, the client may be sent for additional assessment at a treatment facility. An outpatient assessment counselor may be utilized in these cases, especially if the client falls in a "gray area" regarding type of necessary treatment.

- B. Counselor obtains a release of information to authorize report of participation to the City of San José Employee Services/Benefits Division.
- C. Treatment program is contacted by telephone to notify them that the client is coming and that:
1. Treatment is pre-authorized for a specific number of days and the authorization form is mailed to them.
 2. The program should contact City of San José Employee Services/Benefits Division to confirm eligibility.
- D. Counselor fills out the pre-authorization form within one working day of admission and sends it to:
1. Treatment facility
 2. City of San José Human Resources/Benefits Division
 3. Client (at home address)
- E. Counselor interaction with treatment program during treatment will be as follows:
- Outpatient: Telephone contact weekly for the duration of treatment. If necessary, schedule a meeting with the client and treatment counselor for post-treatment planning.

- Inpatient: Meet with staff during the first fifteen (15) days of authorized treatment to determine the subsequent treatment course. Ask them to justify inpatient treatment beyond the fifteen (15) authorized days. Generally speaking, we will want to follow the recommendations of the program.
- Keep in contact on a weekly basis via telephone or letter.
- Attend discharge planning meeting at facility, and set-up first after-care appointment. Request that staff remind client to contact **EAP** therapist for appointment and that there are resources available to the employee via the union or the **EAP**.

F. Provide authorization for alterations or extension of treatment as necessary.

G. Continue contact a minimum of once a month for the first six months. Monitor the client's progress and participation in aftercare. (**EAP** will verify that the facility has obtained a release of information from the client.) Identify indicators of potential relapse and refer to prevention group if appropriate. Make referrals for additional necessary services; i.e., family counseling, adult and child support groups, etc.

H. The treatment program will be considered terminated when the client has successfully completed treatment, aftercare, and **EAP** case management, or:

1. If the client fails to attend aftercare
No more than 2 unexcused absences
Reasons for non-attendance must be cleared through **EAP** therapist
2. Failure to attend follow-up counseling with **EAP** as agreed upon with their counselor.

I. Notify City of San José Human Resources/Employee Benefits and the client, in writing, when the "treatment program" is terminated or completed.

TRACK B: Emergency Admission to Treatment Facility

A. Employee goes to a treatment facility. Facility calls City of San José Human Resources/Employee Benefits to determine eligibility and coverage.

B. City of San José Human Resources/Employee Benefits will confirm eligibility and notify the facility that authorization is required through **EAP** beyond the initial 48-hour period of coverage.

C. **EAP** will visit the treatment facility and assist the client within the 48 hours.

D. If it is determined the client needs inpatient treatment, and

- the treatment facility is an **EAP** recommended facility, authorization will be given as outlined in Track A.

- the treatment facility is not an **EAP** recommended facility, **EAP** will facilitate a transfer to a recommended facility.

E. If outpatient treatment is recommended and client agrees with the treatment course, **EAP** will facilitate the referral and authorize as indicated in Track A.

TRACK C: Second Treatment

A. Eligible employees who have relapsed following an initial treatment would not be authorized for a second treatment without assessment by **EAP**. The procedures would be the same as for Track A or Track B, and approval would be based on professional judgment.

RECOMMENDED TREATMENT PROGRAM

Programs are evaluated on the basis of:

- Skill and experience of the staff
- Intensity of treatment model
- Use of group and family therapy
- Inclusion of a strong education component
- Availability of a well-structured aftercare program
- Involvement of the family in all phases of the program

Referrals to specific programs are made on the basis of:

- 1) quality of program to meet the needs of the employee
- 2) location in relation to employee, and
- 3) cost

EAP will assist in the negotiation of preferred provider rates at the City's request.

The City of San Jose will provide a head count of all covered employees to **EAP** each month. **EAP** will bill the City of San Jose each month the contracted rate per covered employee for all gatekeeping services. The City of San Jose will be responsible for the cost of all recommended treatment services for covered employees.